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VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
PROBABLE JURISDICTION NOTED OCTOBER 17, 1960

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

VOLUME I

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin		
Complaint	7	1
Exhibit "A"—Amended complaint filed before the Interstate Commerce Commission in the case of Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company, et al.	23	13
Appendix "A"—List of defendants	37	24

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 30, 1961

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin—Continued		
Complaint—Continued		
Exhibit "A"—Amended complaint, etc.—Continued		
Appendix "B"—Tariffs and territorial application of the joint through rates together with commodities to which such rates are applicable	50	37
Motion of Secretary of Agriculture for leave to intervene	70	43
Complaint of Secretary of Agriculture	72	45
Appendix "A"—Amended petition of Secretary of Agriculture for leave to intervene before the Interstate Commerce Commission in the case of C.M. St. P. and P. RR Co. v. S.P. and S. Ry. Co.	79	50
Appendix "B"—Order of Interstate Commerce Commission of October 27, 1954 in case of CM.St.P. and P. RR Co. v. S.P. and S. Ry. Co.	82	52
Appendix "C"—Order of Interstate Commerce Commission of May 10, 1957 in case of C.M.St.P. and P. RR Co. v. S.P. and S. Ry. Co.	83	53
Motion of Oregon Electric Railway Company and Oregon Trunk Railway for leave to intervene	84	54
Answer of intervening defendants, Oregon Electric Railway Company and Oregon Trunk Railway	87	56
Joint answer of United States of America and Interstate Commerce Commission	93	60
Amended answer of defendants Spokane, Portland and Seattle Railway Company, et al.	99	62
Motion of Chicago and North Western Railway Company, et al., for leave to intervene as intervening defendants	105	67
Joint answer of intervening defendants, Chicago and North Western Railway Company et al.	107	69
Motion of The National Live Stock Producers Association, et al., for leave to intervene	110	71

	Original	Print
Record from the United States District Court for the Eastern District of Wisconsin—Continued		
Complaint of The National Live Stock Producers Association, et al.	113	74
Order following pre-trial conference order granting leave to intervene and order granting leave to amend answer	117	75
Answer of defendants, Spokane, Portland and Seattle Railway Company, et al. to complaints of Secretary of Agriculture, et al.	120	77
Joint answer of U.S. and I.C.C. to complaints of Secretary of Agriculture, et al.	127	81
Report and Order of the Interstate Commerce Commission of May 10, 1957 in the case of C. M. St. P. & P. RR Co. v. S.P. and S. Ry. Co.	130	83
Order of Interstate Commerce Commission denying petitions for reargument and reconsideration	215	153
Order following pre-trial conference held December 15, 1959	216	154
Opinion, Grubb, J	223	157
Notice of appeal to the Supreme Court of the United States by C. M. St. P. & P. RR Co.	240	171
Notice of appeal to the Supreme Court of the United States by Secretary of Agriculture	247	174
Clerk's certificate (omitted in printing)	260a	176
Order noting probable jurisdiction	260b	177
Proceedings before the Interstate Commerce Commission		
Complaint	261	178
Counsel's note re Appendix "A"	273	187
Joint and separate answer of defendants Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and Oregon Trunk Railway	274	187
Petition of Great Northern Railway Company for leave to intervene	280	191
Reply of complainant to joint and separate answers of defendants	283	192

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Order granting Great Northern Railway Company, et al., leave to intervene	286	194
Petition of the Secretary of Agriculture for leave to intervene	287	195
Order granting Secretary of Agriculture leave to intervene	291	197
Amended complaint	292	198
Counsel's note re Appendix "A" and "B"	305	207
Order permitting filing of amended complaint	306	208
Answer of defendants Chicago and North Western Railway Company and Chicago, Saint Paul, Minneapolis and Omaha Railway Company	307	209
Answer of Chicago, Burlington & Quincy Railroad Co.	310	210
Answer of Chicago, Rock Island and Pacific Railroad Company	312	211
Joint and separate answer of S.P. and S. Ry. Co., Oregon Electric Railway Company and Oregon Trunk Railway to amended complaint	315	212
Amended petition of Secretary of Agriculture for leave to intervene	323	216
Order granting Secretary of Agriculture leave to intervene	326	218
Reply of C. M. St. P. & P. RR Co., to joint answer of S.P. and S. Ry. Co., et al., to amended complaint	327	219
Proposed report of Examiner L. H. Dishman	330	221
Counsel's note re Appendix "A" and "B"	408	281
Secretary's certificate (omitted in printing)	A	282
Transcript of proceedings, June 24, 1954	1	282
Appearances	1	282
Testimony of W. H. Nickels—		
direct	38	284
cross	44	288

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 24, 1954—Continued		
Testimony of J. P. Kiley—		
direct	46	289
cross	58	298
redirect	72	308
Paul H. Draver—		
direct	73	309
cross	77	312
redirect	83	316
recross	84	316
Offer in evidence	85	318
Testimony of H. O. Engel—		
direct	86	318
Fred S. Holden—		
direct	143	358
cross	150	363
redirect	159	368
L. R. Pugh—		
direct	161	370
cross	167	374
redirect	172	378
recross	176	381
Transcript of proceedings, June 25, 1954	180	382
Testimony of W. H. Nickels— (recalled)—		
cross	180	383
Offer in evidence	185	386
Testimony of W. H. Nickels—		
redirect	187	388
W. J. Howard—		
direct	191	390
cross	206	401
redirect	223	413
recross	225	414
redirect	226	415

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 25, 1954—Continued		
Testimony of Robert B. Taylor—		
direct	244	416
cross	250	420
Virgil Davin—		
direct	258	426
cross	265	431
redirect	270	434
recross	270	435
Lowell Thompson—		
direct	271	435
cross	275	438
redirect	281	442
recross	281	443
redirect	283	444
recross	283	444
Eustace W. Ruddick—		
direct	283	444
cross	291	450
redirect	296	453
L. H. Palmer—		
direct	297	454
cross	308	462
redirect	314	466
Ray Bailey—		
direct	316	468
cross	323	473
S. H. Clarke—		
direct	326	476
cross	332	480
redirect	338	484
recross	339	485
Orlo Bagley—		
direct	339	485
cross	343	488
redirect	345	489
recross	347	491
redirect	349	492

VOLUME II

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 28, 1954	353	493
Testimony of S. W. W. Carr—		
direct	353	493
Offer in evidence	360	498
Testimony of S. W. W. Carr—		
cross	361	499
redirect	363	500
recross	366	502
Marvin H. Knutson—		
direct	366	503
cross	374	509
redirect	386	517
recross	388	518
redirect	388	518
George R. Wicker—		
direct	389	520
cross	397	525
J. M. Hutchins—		
direct	402	529
cross	408	533
redirect	421	542
recross	421	543
redirect	423	544
recross	426	546
S. W. W. Carr— (recalled)—		
cross	430	550
redirect	446	561
James L. Shaw—		
direct	451	564
cross	457	568
redirect	461	572
H. S. Sackett—		
direct	462	572
cross	467	576
redirect	476	582

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 28, 1954—Continued		
Testimony of H. S. Sackett—		
recross	478	583
redirect	478	584
recross	479	584
Kenneth W. Lovegren—		
direct	480	585
cross	485	589
redirect	498	598
Ed. Kellenberger—		
direct	498	598
cross	506	604
redirect	507	605
William Paul Duncan—		
direct	507	605
cross	511	607
redirect	514	610
recross	515	610
J. M. Alexander—		
direct	515	611
cross	521	615
John G. Ihnet—		
direct	522	616
Transcript of proceedings, June 29, 1954	537	625
Testimony of Dennis O. Selby—		
direct	537	625
cross	543	629
redirect	549	633
George Diehl—		
direct	551	635
cross	555	637
redirect	559	641
Norman L. Neve—		
direct	559	641
cross	566	646

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 29, 1954—Continued		
Testimony of Norman L. Neve—Continued		
redirect	568	647
recross	570	649
redirect	574	651
A. J. Jaynes—		
direct	574	652
cross	588	662
redirect	608	676
recross	609	676
redirect	609	677
W. M. Wasser—		
direct	610	677
cross	614	680
redirect	618	683
L. E. Wright—		
direct	618	684
cross	623	687
redirect	625	688
Vern McGuire—		
direct	625	689
cross	629	691
William H. Gee—		
direct	632	693
cross	645	702
redirect	650	706
recross	652	707
Einar Linstad—		
direct	652	708
cross	658	712
R. T. Titus—		
direct	664	716
cross	672	721
redirect	675	724
recross	675	724
redirect	676	725
recross	677	725

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 29, 1954—Continued		
Testimony of L. L. Pierce—		
direct	681	728
cross	687	732
redirect	690	735
recross	691	736
redirect	693	737
recross	693	737
Transcript of proceedings, June 30, 1954	698	739
Testimony of H. O. Engel—		
(recalled)—		
cross	698	739
redirect	772	791
recross	773	792
redirect	774	793
Offers in evidence	775	793
Colloquy between examiner and counsel	775	794
Transcript of proceedings, November 9, 1954	821	797
Testimony of A. H. March—		
direct	821	797
cross	831	804
redirect	855	821
recross	858	823
redirect	861	825
Lloyd Meyer—		
direct	863	827
cross	872	833
James W. Devine—		
direct	898	851
cross	905	856
Motion to strike testimony of this witness and ruling thereon	905	857
Testimony of R. L. Bissell—		
direct	919	867
cross	923	870
redirect	926	871
recross	927	872

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 9, 1954—Continued		
Testimony of E. F. Maberg—		
direct	932	876
cross	936	879
redirect	944	884
A. F. Bowman—		
direct	948	887
Appearance	956	893
Transcript of proceedings, November 10, 1954	959	893
Testimony of A. F. Bowman—		
direct	959	893
cross	959	894
redirect	963	897
recross	966	899
redirect	984	911
recross	985	912
Lloyd Meyer— (resumed)—		
cross	987	913
redirect	1008	928
O. A. Behmer—		
direct	1010	929
cross	1014	932
redirect	1022	938
H. W. Menke—		
direct	1023	939
cross	1029	942
redirect	1039	950
recross	1041	951
R. D. Waller—		
direct	1048	956
cross	1054	961
redirect	1066	969
recross	1071	973
E. J. Balda—		
direct	1080	979
cross	1094	989
Lawrence C. Powers—		
direct	1115	1004

	Original	Print
VOLUME III		
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 11, 1954	1122	1007
Testimony of John F. Flynn—		
direct	1122	1007
cross	1134	1016
redirect	1171	1041
recross	1179	1047
redirect	1182	1049
Govert A. Dyke—		
direct	1184	1051
W. K. Hettinger—		
direct	1191	1056
cross	1203	1064
J. L. Pease—		
direct	1208	1067
cross	1224	1078
redirect	1250	1097
Offers in evidence	1251	1097
Testimony of J. L. Pease—		
recross	1252	1099
redirect	1260	1104
recross	1261	1105
redirect	1262	1105
recross	1262	1106
W. K. Hettinger— (resumed)—		
direct	1264	1107
cross	1265	1108
redirect	1266	1109
Ernest A. Beilfus—		
direct	1267	1109
cross	1283	1121
redirect	1302	1135

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, November 12, 1954	1307	1136
Testimony of Willard K. Hettinger—		
(resumed)—		
recross	1307	1136
redirect	1321	1146
Offer in evidence	1322	1147
Testimony of H. O. Engel—		
(recalled)—		
direct	1322	1147
cross	1338	1158
redirect	1344	1162
recross	1345	1163
Colloquy between examiner and counsel	1362	1174
Testimony of H. O. Engel—		
(recalled)—		
redirect	1364	1176
C. E. Crippen—		
direct	1365	1177
cross	1390	1197
redirect	1407	1208
recross	1408	1208
J. J. O'Toole—		
direct	1409	1209
Transcript of proceedings, November 13, 1954	1427	1220
Testimony of J. J. O'Toole—		
(resumed)—		
direct	1427	1220
cross	1428	1221
redirect	1447	1235
Transcript of proceedings, February 17, 1955	1470	1239
Testimony of Robert B. Taylor—		
(recalled)—		
cross	1479	1239
Marvin H. Knutson—		
(recalled)—		
cross	1514	1265
redirect	1533	1278
further cross	1536	1280

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 17, 1955—Continued		
Testimony of Kenneth W. Lovegren—		
(recalled)—		
cross	1538	1282
redirect	1580	1311
recross	1588	1317
Verne McGuire—		
(recalled)—		
cross	1590	1318
redirect	1600	1325
recross	1600	1326
H. S. Sackett—		
(recalled)—		
cross	1601	1326
Ed. Kellenberger—		
(recalled)—		
cross	1602	1327
L. L. Pierce—		
(recalled)—		
cross	1617	1338
J. M. Alexander—		
(recalled)—		
cross	1620	1340
redirect	1638	1353
recross	1640	1354
redirect	1644	1357
W. P. Duncan—		
(recalled)—		
cross	1646	1359
redirect	1655	1365
recross	1656	1366
redirect	1661	1369
recross	1661	1369
Transcript of proceedings, February 18, 1955	1670	1374
Testimony of Dennis O. Selby—		
(recalled)—		
cross	1670	1374
redirect	1674	1377
recross	1675	1378

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 18, 1955—Continued		
Testimony of J. M. Hutchins—		
(recalled)—		
cross	1679	1381
redirect	1681	1382
recross	1683	1384
redirect	1683	1384
recross	1684	1385
George R. Wicker—		
(recalled)—		
cross	1685	1386
redirect	1717	1409
recross	1719	1410
redirect	1720	1411
Einar Linstad—		
(recalled)—		
cross	1722	1412
redirect	1735	1421
recross	1735	1421
Colloquy between examiner and counsel	1735	1422
Motions to strike from the record the testimony of Mr. Hemphill	1740	1425
Testimony of H. O. Engel—		
(recalled)—		
cross	1742	1426
Dennis O. Selby—		
(recalled)—		
cross	1763	1440
Offer in evidence	1775	1449
Testimony of Dennis O. Selby—		
redirect	1780	1452
recross	1781	1454
redirect	1783	1455
E. W. Ruddick—		
(recalled)—		
cross	1784	1456
H. O. Engel—		
(resumed)—		
cross	1811	1475

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 18, 1955—Continued		
Colloquy between counsel	1829	1488
Testimony of H. O. Engel—		
redirect	1832	1490
cross	1833	1491
redirect	1844	1499
cross	1846	1500
redirect	1854	1506
cross	1855	1507
redirect	1872	1518
VOLUME IV		
Transcript of proceedings, February 21, 1955	1878	1521
Testimony of H. O. Engel—		
(recalled)—		
redirect	1878	1521
L. R. Pugh—		
(recalled)—		
cross	1881	1523
redirect	1912	1543
Offer in evidence	1913	1545
Colloquy between examiner and counsel	1918	1548
Testimony of Jesse C. Hestmark—		
direct	1921	1550
Colloquy between examiner and counsel	1933	1558
Testimony of Jesse C. Hestmark—		
cross	1952	1571
redirect	1958	1576
recross	1964	1580
redirect	1969	1583
George F. Ehlen—		
direct	1972	1585
cross	1991	1599
R. R. Veldman—		
direct	1995	1602
Offers in evidence	2016	1616

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 21, 1955—Continued		
Testimony of R. R. Veldman—		
cross	2024	1622
C. R. Jewett—		
direct	2028	1625
cross	2039	1632
Offers in evidence	2041	1634
Testimony of A. E. Wall—		
direct	2042	1634
Offer in evidence	2053	1642
Testimony of A. E. Wall—		
cross	2054	1642
Transcript of proceedings, February 22, 1955	2059	1644
Testimony of H. J. Broughton—		
direct	2059	1644
cross	2067	1650
Jack M. Strickfaden—		
direct	2071	1653
cross	2086	1663
redirect	2093	1668
recross	2094	1669
Peter Ness—		
direct	2094	1669
cross	2103	1675
redirect	2105	1676
Norman Larsen—		
direct	2106	1677
cross	2113	1682
redirect	2116	1684
recross	2118	1685
Gordon T. Shaw—		
direct	2119	1686
cross	2126	1691
C. A. Nelson—		
direct	2129	1693
Offer in evidence	2154	1710

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 22, 1955—Continued		
Testimony of C. A. Nelson—		
cross	2156	1711
Robert G. Miller—		
direct	2164	1717
cross	2177	1725
redirect	2182	1729
recross	2183	1729
redirect	2183	1730
recross	2184	1730
Martin B. Edwards—		
direct	2185	1731
cross	2196	1739
Duane Evans—		
direct	2198	1740
cross	2208	1747
redirect	2212	1750
Offer in evidence	2214	1751
Testimony of Frank Daubenspeck—		
direct	2214	1752
cross	2225	1759
Wayne Peterson—		
direct	2226	1760
cross	2232	1764
redirect	2234	1766
James Wilson—		
direct	2235	1766
cross	2246	1774
Transcript of proceedings, February 23, 1955	2258	1781
Testimony of Emory P. Jones—		
direct	2258	1781
cross	2268	1788
John J. Helm—		
direct	2271	1790
cross	2286	1800
redirect	2291	1804
recross	2292	1804

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 23, 1955—Continued		
Testimony of George Hennecke—		
direct	2292	1805
cross	2304	1813
redirect	2310	1816
recross	2310	1817
redirect	2310	1817
H. E. Sanderson—		
direct	2311	1818
Offer in evidence	2323	1826
Testimony of H. E. Sanderson—		
cross	2323	1826
T. W. Nordby—		
direct	2328	1829
cross	2337	1836
redirect	2339	1837
Arthur F. Quirin—		
direct	2339	1838
cross	2351	1846
redirect	2355	1849
Offer in evidence	2355	1849
Testimony of Arthur F. Quirin—		
recross	2355	1849
W. R. Bowman—		
direct	2357	1850
cross	2368	1857
S. B. Ferrell—		
direct	2372	1860
cross	2379	1865
Richard E. Davis—		
direct	2380	1866
Offer in evidence	2391	1873
Testimony of Richard E. Davis—		
cross	2391	1874
redirect	2400	1880
recross	2401	1881

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, February 23, 1955—Continued		
Testimony of R. M. Hegwald—		
direct	2401	1881
cross	2410	1887
John W. Kennedy—		
direct	2413	1890
cross	2423	1897
John M. Starr—		
direct	2426	1899
cross	2443	1911
Transcript of proceedings, April 5, 1955	2450	1913
Additional appearances	2450	1913
Testimony of A. F. Bowman— (resumed)—		
cross	2456	1914
Colloquy between examiner and counsel	2466	1920
Testimony of A. F. Bowman—		
cross	2469	1922
redirect	2488	1936
recross	2495	1941
redirect	2495	1941
recross	2495	1941
redirect	2496	1942
B. V. Hancock—		
direct	2497	1943
cross	2510	1952
Offer in evidence	2516	1956
Testimony of L. M. MacPherson—		
direct	2517	1957
cross	2524	1961
redirect	2526	1963
Offer in evidence	2527	1964
Testimony of Ralph Budd—		
direct	2529	1965
cross	2555	1982

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 5, 1955—Continued		
Testimony of Charles A. Hart—		
direct	2565	1989
Offer in evidence	2596	2011
Testimony of Charles A. Hart—		
cross	2600	2014
Robert S. MacFarlane—		
direct	2608	2019
cross	2619	2027
VOLUME V		
Transcript of proceedings, April 6, 1955	2625	2029
Testimony of J. H. Poore—		
direct	2625	2029
cross	2647	2045
redirect	2655	2051
recross	2658	2053
V. P. Turnburke—		
direct	2660	2054
cross	2691	2075
Colloquy between examiner and counsel regarding offer in evidence	2694	2077
Testimony of W. H. Thomas—		
direct	2701	2082
Offers in evidence	2732	2104
Testimony of W. H. Thomas—		
cross	2733	2104
redirect	2750	2116
recross	2756	2120
L. W. Albertson—		
direct	2760	2123
Offer in evidence	2779	2137
Transcript of proceedings, April 7, 1955	2782	2138
Testimony of L. W. Albertson—		
cross	2782	2138
R. F. Smith—		
direct	2790	2143
cross	2817b	2164

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 7, 1955—Continued		
Testimony of R. F. Smith—		
redirect	2837	2177
recross	2840	2179
redirect	2840	2179
H. D. Lear—		
direct	2842	2180
cross	2861	2193
redirect	2875	2203
recross	2878	2205
redirect	2879	2206
recross	2880	2207
Offer in evidence	2882	2208
Testimony of Walter J. Webb—		
direct	2883	2209
cross	2889	2213
Offer in evidence	2891	2214
Testimony of C. E. Finley—		
direct	2891	2215
cross	2917	2232
redirect	2926	2238
Transcript of proceedings, April 8, 1955	2930	2240
Testimony of C. H. Burgess—		
direct	2930	2240
cross	2937	2244
Offer in evidence	2938	2245
Testimony of William B. Irwin—		
direct	2938	2246
Colloquy between examiner and counsel	2971	2269
Testimony of William B. Irwin—		
direct	2975	2272
cross	2988	2281
Offers in evidence	3027	2309
Testimony of E. S. Ulyatt—		
direct	3028	2310
cross	3043	2320
redirect	3049	2324

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 11, 1955	3052	2325
Testimony of William A. Weiss—		
direct	3052	2325
cross	3057	2329
redirect	3061	2331
recross	3062	2332
Offer in evidence	3062	2332
Testimony of Robert O. Small—		
direct	3063	2333
cross	3069	2338
Offer in evidence	3091	2353
Testimony of H. H. Keck—		
direct	3092	2354
cross	3103	2361
redirect	3111	2366
Offers in evidence	3112	2367
Testimony of T. N. Nashland—		
direct	3113	2368
cross	3118	2372
Offers in evidence	3122	2374
Testimony of Clarence F. Croffut—		
direct	3123	2375
cross	3135	2384
redirect	3138	2386
recross	3140	2387
redirect	3143	2389
Offer in evidence	3143	2389
Testimony of Clarence F. Croffut—		
recross	3143	2390
George L. Slorah—		
direct	3145	2390
cross	3159	2400
redirect	3164	2404
recross	3166	2405
Homer B. Bassett—		
direct	3168	2406
cross	3193	2423
Offer in evidence	3200	2428

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
VOLUME VI		
Transcript of testimony, April 12, 1955	3204	2429
Colloquy between examiner and counsel	3204	2429
Testimony of Paul K. Byers—		
direct	3206	2430
J. A. Christiansen—		
direct	3208	2432
redirect	3219	2440
cross	3219	2440
redirect	3238	2454
Offer in evidence	3239	2455
Testimony of J. A. Christiansen—		
recross	3240	2455
J. A. Swanson—		
direct	3244	2457
Offers in evidence	3269	2475
Testimony of J. A. Swanson—		
cross	3270	2475
redirect	3278	2481
C. E. Larsen—		
direct	3281	2483
Colloquy between examiner and counsel	3283	2485
Testimony of C. E. Larsen—		
direct	3289	2489
cross	3299	2496
Offers in evidence	3307	2501
Testimony of George F. Ehlen—		
direct	3308	2501
Colloquy between examiner and counsel	3311	2504
Testimony of George F. Ehlen—		
direct	3313	2505
Transcript of proceedings, April 13, 1955	3367	2541
Testimony of Frank A. Emme—		
direct	3367	2541
cross	3370	2543
Mark Houston—		
direct	3371	2544
cross	3373	2545

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 13, 1955—Continued		
Testimony of George F. Ehlen—		
(resumed)—		
direct	3376	2547
Offers in evidence	3469	2613
Testimony of George F. Ehlen—		
cross	3470	2614
Transcript of proceedings, April 14, 1955	3509	2639
Testimony of George F. Ehlen—		
(resumed)—		
cross	3509	2640
redirect	3535	2658
recross	3543	2664
cross	3547	2667
A. N. Tein—		
direct	3550	2669
Colloquy between examiner and counsel	3615	2714
Testimony of A. N. Tein—		
direct	3623	2719
cross	3673	2755
Offers in evidence	3687	2764
Transcript of proceedings, April 15, 1955	3690	2765
Testimony of W. A. Hart—		
direct	3690	2766
cross	3716	2784
Offers in evidence	3723	2788
Testimony of H. D. Lear—		
direct	3723	2789
cross	3733	2795
redirect	3744	2803
Offers in evidence	3746	2805
Testimony of H. D. Lear—		
recross	3747	2805
Howard V. Rhedin—		
direct	3748	2806
cross	3750	2807

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, April 15, 1955—Continued		
Testimony of Walter J. Webb—		
direct	3752	2809
cross	3756	2811
Offers in evidence	3758	2813
VOLUME VII		
Transcript of proceedings, June 21, 1955	3762	2814
Testimony of W. H. Nickels—		
(recalled)—		
direct	3765	2816
C. E. Crippen—		
(recalled)—		
direct	3775	2823
H. O. Engel—		
(recalled)—		
direct	3818	2853
Colloquy between examiner and counsel	3840	2868
Testimony of H. O. Engel—		
direct	3847	2872
Offers in evidence	3870	2888
Testimony of Paul Wilson—		
direct	3873	2890
Transcript of proceedings, June 22, 1955	3906	2911
Testimony of Paul Wilson—		
(resumed)—		
direct	3906	2911
W. H. Nickels—		
(recalled)—		
cross	3919	2921
redirect	3941	2935
recross	3943	2937
redirect	3972	2957
recross	3974	2958
(recalled)—		
direct	3981	2964
cross	3983	2965
Offers in evidence	3983	2965

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
Transcript of proceedings, June 22, 1955—Continued		
Testimony of C. E. Crippen—		
(recalled)—		
cross	3984	2966
Colloquy between examiner and counsel	3996	2974
Testimony of C. E. Crippen—		
cross	4002	2798
Offers in evidence	4020	2990
Testimony of C. E. Crippen—		
cross	4021	2991
redirect	4031	2998
H. O. Engel—		
(resumed)—		
cross	4035	3001
Transcript of testimony, June 23, 1955	4066	3021
Testimony of H. O. Engel—		
(resumed)—		
cross	4066	3021
Colloquy between examiner and counsel	4071	3024
Testimony of H. O. Engel—		
cross	4075	3027
redirect	4134	3067
Paul Wilson—		
(recalled)—		
cross	4140	3071
Offer in evidence of counsel Torinus's Exhibit No. 138	4144	3074
Colloquy between examiner and counsel	4146	3075
Testimony of Paul Wilson—		
cross	4148	3077
redirect	4199	3112
Colloquy between examiner and counsel	4202	3114

	Original	Print
Proceedings before the Interstate Commerce Commission—Continued		
EXHIBITS:		
No. 1 (Witness Nickels)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Finance and Accounting Department, Statement of traffic originating at stations on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, etc., for the year 1952	4210	3117
No. 3—(Witness Engel)—Statement showing definition of territorial and other terms	4238	3145
No. 18—(Witness Hettinger)—Statement showing estimate of increased revenue on carload traffic shown in Exhibit 1, which would have accrued to CMSTP & P RR Co. during calendar year 1952 if all of such traffic had been interchanged at Spokane, Wash. between Spokane Portland & Seattle Ry. Co. and CMSTP & P RR Co.	4239	3146
No. 22—(Witness Pease)—Statement of rates on sheep, in double-deck carloads from Washtucna, Wash. and Bend, Oregon	4240	3147

[fol. 353]

Transcript of Proceedings—June 28, 1954

Exam. Dishman: The hearing will come to order, please.

Mr. Maguire: Mr. Examiner, Mr. Carr of the Traffic Bureau of Sioux Falls, South Dakota has asked me whether it would be agreeable for him, as an intervenor in the case, to make his presentation at this time, and it is entirely agreeable.

Exam. Dishman: All right. Do you want to enter your appearance, Mr. Carr?

APPEARANCE

Mr. Carr: My name is S. W. W. Carr, Manager of the Traffic Bureau of Sioux Falls, 100 West 10th Street, Sioux Falls, South Dakota. I am admitted to practice, and our petition of intervention was accepted on the 26th day of May.

Exam. Dishman: What is your position?

Mr. Carr: We appear in support of the application.

Exam. Dishman: Of the complaint.

Mr. Carr: Of the complaint—correction.

S. W. W. CARR was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Mr. Carr, do you want to make your presentation at this time?

A. My name is S. W. W. Carr. I am Traffic Manager of the Traffic Bureau of Sioux Falls, 100 West 10th Street, Sioux Falls, South Dakota which position I have held for nine years. The Traffic Bureau of Sioux Falls is incorporated and is an association of shippers and receivers of [fol. 354] freight. It has no transportation company members.

Our Articles of Incorporation provide that the Bureau will "aid and assist in the development of adequate transportation and communication facilities and services; appear for and represent members and shippers at rate and service hearings and controversies in which the community and trade territory of Sioux Falls has an interest and to promote and protect the interest of said community and territory in all matters affecting service, facilities, traffic, and rates." At a regular meeting of the Board of Directors of the Traffic Bureau on December 11, 1953, the subject of this complaint, which was pending then, was discussed and I, as Traffic Manager, was instructed to appear as a witness in support of the complaint on behalf of the interests of Sioux Falls as we found them to exist.

On May 21st, our Board of Directors, in regular session, reaffirmed the previous action by instructing that the Traffic Bureau of Sioux Falls should file a formal petition of intervention, which we did on May 24, 1954.

We receive many carloads annually of forest products in Sioux Falls from origins on the defendant carriers via the Milwaukee Railroad and other carriers. Joint through rates and joint through routes have been established via the Milwaukee Railroad many years ago and are in existence yet today on forest products, with one very important exception. I refer to routes from the Oregon Electric. [fol. 355] On May 27, 1954, one of our members, the Fellows Sales Company, a wholesale lumber dealer and broker, phoned our office and wrote our office concerning the rate on lumber from Sweet Home, Oregon, on the Oregon Electric, to Madison, South Dakota on the Milwaukee Railroad. I have made copies of his letter, which I would like to submit for identification as Exhibit No. 16.

Exam. Dishman: Intervenor's Exhibit No. 16.

(Intervenor's Exhibit No. 16, Witness Carr, was marked for identification.)

The Witness: I have the original with me for inspection of any interested party.

As he requested, I carefully analyzed the tariff and I found no through route from Sweet Home, Oregon to Madison, South Dakota. Further, I found that the same condition existed from all OE points on their line extending between Albany to Dollar, Oregon and including some 17 origins to all destinations in eastern South Dakota on the Milwaukee Railroad.

To the extent that these destination points in South Dakota are local to the Milwaukee, such as the shipment to Madison, there are no through rates at all and shippers must pay a penalty or lose the business. We contend that severely prejudices those lumber companies located on the Milwaukee Railroad in the trade area of Sioux Falls, and we ask that joint routes via Spokane be published from [fol. 356] those 17 origins, just as they are from the other Oregon Electric points.

Mr. Rockwood: May I interrupt for clarification right there? You are referring in that paragraph, beginning with "To the extent—" to the end of your oral testimony entirely to rates off what has been referred to as the Santiam Branch of the Oregon Electric from Dollar to Sweet Home?

The Witness: That is correct, yes.

Mr. Rockwood: Albany to Dollar, I should say.

The Witness: Well, I believe there are through rates from Albany to the junction point.

Mr. Rockwood: On the branch line?

The Witness: On the branch line there are not.

Such through rates and routes are desirable to eastern stations on the Milwaukee Railroad. We ship many carloads annually of iron and steel grain bins and many carloads of hogs to the Pacific Northwest but no hogs via the Milwaukee Railroad to destinations on the defendant carriers because no through rates and routes exist via the Milwaukee.

We have one member, the Sioux Steel Company, who manufactures iron and steel grain bins in Sioux Falls. The Sioux Steel Company is located on the rails of the Milwaukee Railroad and naturally most of their inbound tonnage is received over the Milwaukee and most of their

outbound tonnage moves out of the Milwaukee Railroad under fabrication in transit privileges. Additionally, the [fol. 357] Milwaukee Railroad has more liberal fabrication in transit rules which further justify using the Milwaukee Railroad on both its inbound and outbound shipments. The principal source of supply of iron and steel to our member is in Pennsylvania, Ohio and West Virginia. The Sioux Steel Company has shipped 18 carloads of bins to Idaho, Oregon and Washington in the first five months of this year.

May I depart from the prepared statement long enough to briefly describe the Sioux Steel Company? It is the largest manufacturer in the United States, and I presume, in the world, of diversified sheet steel farm equipment, including grain bins, cribs, water tanks, feeders, ventilators and numerous other items. In 1953 they used almost 16,000,000 pounds of iron and steel. In 1954 they expect to use around 24,000,000 pounds.

The Great Northern Railway does publish some very limited transit privileges at Sioux Falls on westbound transcontinental traffic when "moving via authorized routes" through Snowden, Montana or Fort Buford, North Dakota. The Trans-Continental Routing Tariff covering the tonnage from the origin territory east of Chicago provides routes through Sioux Falls on the Great Northern only when moving into Sioux Falls on the Illinois Central or moving via the CB&Q Railway to Sioux City and the Great Northern into Sioux Falls.

The Sioux Steel Company ordinarily does not receive shipments via those routes because such tonnage has little [fol. 358] value on any other traffic. The Illinois Central ends at Sioux Falls and fabrication in transit of iron and steel is not generally available on shipments moving out via other carriers into South Dakota, North Dakota, Minnesota and other Western Trunk Line territory. The same thing is true of the tonnage moving via the Great Northern from the CB&Q Railway at Sioux City. In order to ship via the Great Northern to points on the lines of the defendant carriers, it would be necessary that the Sioux Steel anticipate in advance how many carloads of grain bins they might

have into this Trans-Continental Territory and then order a sufficient number of carloads of iron and steel routed into Sioux Falls via either of the two routes which I have described. Assuming that they had ordered 100 carloads and had use for only 50 carloads, they would then have lost valuable fabrication in transit privileges on the remaining 50 carloads of inbound tonnage.

Thus to all practical purposes the Sioux Steel Company cannot ship their grain bins to points on the defendant carriers via any route and by virtue of that fact are handicapped and prejudiced in the sale of grain bins in the Northwest. One of their principal competitors, the Butler Manufacturing Company, is located in the Twin Cities. While they cannot ship from the Twin Cities via the Milwaukee Railroad to points on the lines of the defendant carriers, they can ship to those points via the Great Northern and the Northern Pacific without the routing restriction [fol. 359] on their inbound traffic.

We contend it is necessary and desirable to have such joint through routes and rates from points east of Chicago through Sioux Falls to destinations on the defendant carriers.

Sioux Falls is a large livestock market. During 1953 there was shipped out of Sioux Falls over one million head of livestock and approximately half a million of those moved out by rail. Many carloads of hogs move annually to the north coast. On investigation, I found in the calendar year of 1953 that 189 carloads moved to Seattle via the Milwaukee Railroad with none to Portland on the SP&S via the Milwaukee Railroad due to the fact that there are no joint rates and routes.

On the other hand a total of only 26 cars during that same period moved out to Seattle via other routes, 22 via the North Western-Northern Pacific and four via the Great Northern. Thus, where routing is available, the Milwaukee Railroad received almost 90 per cent of the movement. During that period there were 394 carloads of hogs moved to Portland via the North Western-Northern Pacific and via the Great Northern but none via the Milwaukee.

There are certain inherent advantages in each route. The North Western and the Great Northern loads and moves out of Sioux Falls in the late afternoon, whereas the Milwaukee loads and moves out of Sioux Falls in the morning at about 7:00 a. m. Thus, when it is not possible or convenient to load out of Sioux Falls in time to connect [fol. 360] with the evening trains of the North Western and the Great Northern, the shipper is not compelled to hold his livestock in the yards 24 hours but can ship them 12 hours later on the Milwaukee and arrive at the northwest coast, where joint through rates and routes exist, at approximately the same time as the shipments loaded the evening before.

On behalf of the shipping interests of Sioux Falls and our members in particular, we ask that joint through rates and joint through routes be established from Sioux Falls via the Milwaukee Railroad to all destinations on the lines of the defendant. Such joint rates and routes are both necessary and desirable to our shippers.

OFFER IN EVIDENCE

That concludes my direct statement, and I would like to offer Exhibit No. 16 in evidence.

Exam. Dishman: It will be received in evidence.

(Intervenor's Exhibit No. 16, Witness Carr, was received in evidence.)

Exam. Dishman: I just wanted to ask one question about your livestock shipments. Is the heavy movement of livestock to the west or to the east, or do you know?

The Witness: Oh, no, it isn't the heaviest to the west. We do have a heavy movement both to the northwest and to southern, into California. We have a large movement down into Houston and Fort Worth, Texas of hogs, particularly. [fol. 361] Our heaviest movement there is of hogs, and then we ship lots of hogs back east. Both the Milwaukee and the Illinois Central and the Great Northern have their fast livestock schedules for the southeast and southwest designed to take care of our hog movement in the late afternoon.

Exam. Dishman: You ship all types of livestock, or is it principally hogs?

The Witness: All types, principally hogs.

Exam. Dishman: Any questions?

Mr. Maguire: No, not at this time.

Mr. Rockwood: My examination will go only to one point and my associates will cover other matters.

Cross examination.

By Mr. Rockwood:

Q. On the matter of your lumber rates and particularly the situation discussed in this Exhibit No. 16 of the inability of your member, Fellow Sales Company, to ship off the points on the Oregon Electric between Albany and Dollar, that line, the Oregon Electric, has been referred to by many others around here as the Santiam Branch. Are you familiar with that?

A. No, sir.

Q. Well, it runs up the Santiam River and it is called the Santiam Branch of the Oregon Electric. If the rates from the mills on the Santiam Branch on the Oregon Electric were put on the same basis as the other rates on the Oregon [fol. 362] Electric via the Milwaukee to your area as to lumber, your difficulties would be solved, would they not?

A. Very largely. Of course, there's still a little difficulty of sometimes diverting or using milling and transit privileges at Sioux Falls when going to points on other lines, but that would take care of it very largely.

Q. And I won't go into detail, but there are many other routes via Sioux Falls where there are transit privileges?

A. Yes, sir.

Mr. Rockwood: That's all I have.

Mr. Tornus: Mr. Examiner, with respect to a portion of Mr. Carr's statement that concerns other commodities, I would appreciate it very much if cross examination could be deferred. In his petition for intervention, Mr. Carr did not specify the rates and the commodities in which he was interested, and I think if we might have a little time to

study that statement and cross examine at a later time, both Mr. Carr's time and the time of the Examiner would be saved.

Exam. Dishman: We will be off the record.

(Discussion off the record.)

Exam. Dishman: We will be on the record. Are there any further questions at this time? Mr. Carr, then, will be excused temporarily with the understanding he will be available for cross examination this afternoon.

Mr. Maguire: I might save time this afternoon by asking [fol. 363] Mr. Carr a couple of questions with respect to Mr. Rockwood's cross examination.

Exam. Dishman: All right.

Redirect examination.

By Mr. Maguire:

Q. I notice from Exhibit No. 16 that the Fellows Sales Company is a wholesale lumber dealer?

A. Yes, sir.

Q. And you also mentioned that, as to lumber traffic, some of your members availed themselves of transit privileges out of Sioux Falls. That is, I presume, east, north or south from Sioux Falls in the general direction of movement, is that correct?

A. That's correct, yes, sir.

Q. And I would like to show you Exhibit No. 9 in this case which is a map introduced by Witness Engel, showing lumber rates from SP&S System lines origin territory into territory on the Milwaukee, and in preface, will very briefly explain that the green area between Missoula and Mobridge has rates only applying from Vernonia, Washington, which is this point marked in green on the Keasey Branch of the SP&S, and that the red symbol on the Santiam Branch, which leaves the Oregon Electric at Albany, Oregon indicates, according to the legend here, that there are no rates from the Santiam Branch to any point on the Milwaukee

via Spokane, and that the only rates from—yes, that's right. That the yellow portion of the SP&S over here indicates [fol. 364] that there are rates from that yellow portion on the map to the yellow portion on the Milwaukee east of Mobridge, including the Rapid City Branch out here in South Dakota, which extends a little bit south and west of Mobridge, and that the red points outlined there, including Chicago, Des Moines, LaCrosse and other points indicated, are where the rates from the SP&S via Spokane do not apply on the Milwaukee at all, and it has also been testified that the rates from the remainder of the SP&S which can be reached by the Southern Pacific and the Union Pacific, that those rates apply via Marengo, Washington, which is up near Spokane, thence Milwaukee east, but those rates are applicable only to points on the Milwaukee except that cars may be shipped east of Chicago, but only by the across lake routes, and they do not apply south of the Ohio and Potomac Rivers, and that the Kansas City line of the Milwaukee, those rates apply to that line, but not in connection with any other connecting carriers of the Milwaukee.

Now, with that background of the testimony in the case, would the existing routing via the Milwaukee satisfy, from your knowledge, all of the diversion needs of the wholesalers located in the Sioux City area?

Mr. Rockwood: Objected to as no foundation having been laid.

Mr. Maguire: I meant, in the Sioux Falls area.

Mr. Rockwood: I will still object to it as no foundation having been laid. He testified, not of his own knowledge [fol. 365] at all, but on the basis of one letter from Fellows Sales Company, I believe, and there is no foundation laid.

Mr. Maguire: You brought up the matter in cross examination, Mr. Rockwood, yourself.

Mr. Rockwood: I asked him if the Fellows Sales Company would be satisfied.

Exam. Dishman: Let's see what the witness does know. Can you testify to that based on your own knowledge?

The Witness: Yes, sir.

Exam. Dishman: Proceed.

The Witness: To qualify my knowledge, all of the lumber companies and the two sash and door companies in Sioux Falls are members of our Association, and I am regularly called upon to quote freight rates to them, audit freight bills and give them routing and so forth. Now, our milling in transit, so far as I can determine, we have never, at least in recent years, had occasion to ship anything east of the Mississippi River. As far as our diversion is concerned, I have had numerous requests on carloads—I can't state whether they were from the Oregon Electric or which—but from cars in the northwest from the Fellows Sales Company for through rates and routes where they want to divert it after it has reached Sioux Falls. That also is into the immediate Iowa, Minnesota territory. There again, we have never had any that I know of east of the Mississippi River.

[fol. 366] By Mr. Maguire:

Q. Well, when you stated that if lumber from the Santiam Branch had the same routes and rates as from the remainder of the SP&S, that's the way I understand you answered, that would satisfy your immediate problem?

A. Largely so, yes, sir. Of course, I do think it would be desirable to have open routes so that we could divert to any point we wanted to.

Mr. Maguire: That's all for the time being.

Recross examination.

By Mr. Rockwood:

Q. Incidentally, Mr. Carr, you never filed an application with the Oregon Electric of the SP&S to make that Santiam rate basis the same as from other points on the SP&S, did you?

A. No, sir, I have not.

Q. None of your members ever asked you to?

A. No, sir.

Q: Until you had this letter from Mr. Fellows or his company?

A. That is correct.

Mr. Rockwood: That is all I have.

Exam. Dishman: Witness excused temporarily.

Mr. Maguire: Call Mr. Marvin Knutson.

MARVIN H. KNUTSON was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is Marvin H. Knutson?

[fol. 367] A. Yes, sir.

Q. Where do you live, Mr. Knutson?

A. 82 Darkmoor Drive, Eugene, Oregon.

Q. In what business are you engaged?

A. Wholesale lumber business.

Q. With what wholesale lumber company are you affiliated?

A. Eugene Willamette Lumber Company.

Q. In what capacity are you employed or interested in that company?

A. I am a partner in the firm and the office manager.

Q. And as office manager, what are your duties, the general scope of your duties?

A. I take care of all the office routine and everything outside of the sales department, accounting and personnel, traffic.

Q. And as office manager, are you in touch with the purchasing and sales activities of the organization?

A. Yes.

Q. And do you have anything personally to do, or do you generally supervise the routing of cars?

A. Generally supervise it. We have an employee that handles the details.

Q. I see, and are you engaged entirely in the wholesale lumber business?

A. Yes.

Q. How many cars per year does your firm ship, on the average?

[fol. 368] A. Between four and five thousand cars a year.

Q. Now, the term "transit car" has been defined before during the course of this hearing, so we will not go into that, and you understand what transit cars are, do you?

A. Yes.

Q. About what percentage of your business is divided between transit cars, dealing in transit cars and filling so-called firm orders?

A. About 75 to 80 per cent would be transit cars, and the balance would be firm orders.

Q. And what is the general scope of your sales area? What districts and areas do you try to cover?

A. Generally, we try to cover the whole United States. Most of the business, of course, is in the east, southwest and south and some of the middle plains area.

Q. Did you hear the preliminary statement or review of the testimony that has been offered in this case that I just went over with Mr. Carr, who was the intervenor in the case?

A. Yes, sir.

Q. I will not repeat that at this time then, but I will put before you that map, Exhibit No. 9, for your reference. Now, are you generally familiar with the issues involved in this case as they have been explained to you and have you seen copies of the complaint insofar as it affects your business?

A. Yes.

[fol. 369] Q. And have you formed any opinion as to whether the establishment of joint through rates via Spokane, Washington between the SP&S System, including the Oregon Electric and Oregon Trunk, would be necessary or desirable in the interest of your business?

A. Yes, sir, it would be desirable.

Q. Where do you buy the lumber with which you fill these firm orders and also fill these transit cars?

A. About 20 to 30 per cent of our lumber is purchased on the SP&S and Oregon Electric lines.

Q. Now, you have said that you believed it would be desirable to the interest of your business, of your company to have this, the joint through rates which are proposed by the Milwaukee and the necessary routes to carry out those rates. Can you state generally what your reasons are for coming to that conclusion?

A. Generally, it would open up further sales territory for us in the North and South Dakota, Minnesota, Wisconsin and other areas that are affected by the present system of rates and routes, and if we were at liberty to route cars through this territory at through rates, we undoubtedly would be able to solicit more business in this area, resulting in profit and sales for our firm, and, generally, we would be able to, there would be less hazard in shipping into this territory because for some reason or other a car of lumber was rejected in this area, we could still send it on, on the firm order cars for instance.

[fol. 370] Exam. Dishman: Is the record clear what you mean by "this territory"?

Mr. Maguire: I was just going to ask him.

By Mr. Maguire:

Q. When you say "this territory", what territory are you speaking of?

A. Referring to the territory on this map covering North and South Dakota, Iowa, Minnesota and Wisconsin.

Q. Now, does your company make it a practice to start any transit cars via Spokane and the Milwaukee with the idea of disposing of it or part of it in local territory of the Milwaukee, particularly in South Dakota and in southwestern Minnesota or Minnesota west of Minnesota Transfer or Minneapolis and St. Paul?

A. We would not start a car that way for disposition in that territory.

Q. What is the reason for that?

A. Because if it happened that the car was not sold in that territory, it would have to be moved out of the territory in a combination rate which would apply and which would be prohibitive.

Q. Now, in the case of firm sales or specific sales to customers in the territory which we have just described, would you state whether or not the privilege of diversion to points beyond the Milwaukee Road such as Chicago and east would be of any convenience or value to you?

A. Yes, it would. In case the car was rejected by a customer on the Milwaukee and on points referred to on [fol. 371] this map, we would have to move the car out, and the best sales territory is, of course, Chicago and east, and we would want to at least have the privilege of selling it at a through rate.

Q. And when a car is refused or rejected for any reason, will you state whether or not it is easier to dispose of that car in territory immediately adjacent to the point of rejection or to move it into some more removed part of the country to dispose of it?

A. Well, there is little relationship between the location of the car and the potential sales area. I mean, the fact that a car is at Pierre, South Dakota and unsold or, say, at Aberdeen, does not mean it's going to be any easier to sell it at Chamberlain or Sioux Falls than it would be in New York because we cover the whole country, anyhow, in our sales efforts.

Q. Now, is your company interested, or would it be interested in making part carload sales to small yards in portions of this territory which are in less heavily or densely populated centers of population?

A. Yes, that's a good possibility in this area. There are a lot of small yards and the possibility of shipping in a part car into that area and the rest of it being sold east or in some other area is a possibility.

Q. And would rates and routes which would permit development of that market be of interest to you?

A. Yes, it would undoubtedly result in more business for us.

[fol. 372] Q. Is your interest in this proceeding directed toward the relocation or re-routing of traffic which you now ship or the increase of your business and increase of traffic by reason of opening up new territories, which is it?

A. It would be the interest in opening up the routes and rates in new territory. So long as we can get it there via through rates and routes, we don't care how we get it there.

Q. Now, it has been pointed out and undoubtedly will be further pointed out to you on cross examination that mills or sources of supply upon the Oregon Electric which are also served by the Southern Pacific have a route Southern Pacific, Portland, Union Pacific, Marengo, Washington, Milwaukee into this territory. Are all of the mills with whom you deal located on both the Southern Pacific and the Oregon Electric, or do you have mills or sellers with whom you deal who are located exclusively on the SP&S or Oregon Electric?

A. Would you restate the question? I think there is ambiguity.

Q. Are all the mills located in this area that you deal with located on both railroads, OE and the SP?

A. Very few of them are located, very few on both.

Q. Now, will you state whether or not the question of ready car supply is one of interest to your business?

A. It certainly is. Any business or any firm in the lumber business is directly affected by the supply of cars. If there are no cars being loaded, there's no business going on.

[fol. 373] Q. And do you experience, with respect to the mills in the Willamette Valley and also on over toward the west of the Willamette Valley, do you experience periodic tight periods for car supply?

A. Yes, there has been in the past.

Q. And to the extent that another source of car supply will be available, will that be of interest to you?

A. It would help, yes.

Q. Do you buy any lumber, your concern, from mills located at local points on the Oregon Electric on the Santiam Branch?

A. Yes, we buy some lumber from there.

Q. And it has been explained that this red sign on the map indicates that there is no such rate published by the

SP&S Spokane Milwaukee except to Mobridge, South Dakota, that one point. In filling any orders or sending any cars to Milwaukee territory in the particular area which you have described, which is generally southwest and west of the Twin Cities, does the complete absence of any rates from the Santiam Branch hamper you either in filling orders or in routing your traffic?

A. Well, in a case like that, we would just have to buy the lumber where it would go in on a through rate. For instance, if we had a firm order placed in this area on the map, in the general area of southwest of the Twin Cities, we would have to be very careful where we bought it and stay off the Santiam Branch.

Q. When the lumber market is good, is firm, can you [fol. 374] always get lumber from any one particular mill, or is there competition in buying between the different wholesalers?

A. A great deal of competition in buying.

Q. And when the lumber market is slack, do all of the mills with whom you deal, particularly the smaller mills, do they continue their full line of production so that all specifications and grades can be purchased without trouble from them, or do they slacken off?

A. Some of them probably slacken off. The type of business we are in, loading specifications are not particularly tough.

Q. But will you state whether or not it will simplify your operation to have unrestricted routing?

A. Yes, it would.

Q. From the SP&S to Milwaukee territory?

A. Yes, of course it would. Anything that would open up the routing and make it less complicated and less restrictions on our buying territory and on our selling territory and the routes used into the selling territory would be to our advantage as far as the business is concerned.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Did you state what type of lumber you deal in primarily?

A. Douglas fir, west coast hemlock, citrus, spruce, pine—

Exam. Dishman: You solicit orders for that lumber, you [fol. 375] say, throughout the United States?

The Witness: Yes.

By Mr. Rockwood:

Q. How far north do you go for your supply of lumber?

A. We have gone up into Spokane and, of course, into Canada for a few cars.

Q. Do you buy or handle lumber out of the State of Washington west of the Cascades?

A. Yes.

Q. Up as far north as the Canadian boundary?

A. Not any up around the Puget Sound area—at least, I don't recall.

Q. Where do you buy, Grays Harbor?

A. Some.

Q. Is Grays Harbor served by the Milwaukee?

A. I would have to look at the map to see. I don't recall. Is it or isn't it?

Q. I don't know. I assumed that you were thoroughly familiar with this territory out here and could tell me.

A. Well, there are a lot of points in Washington and Oregon that I couldn't tell you what railroad went into them without looking at a map.

Q. Well, I believe that the Milwaukee gets out to Grays Harbor. Am I not right?

Mr. Maguire: That's quite right.

[fol. 376] Mr. Lutterman: I think all the lines serve—

Mr. Rockwood: Not the Great Northern.

Mr. Maguire: Northern Pacific, and Union Pacific both.

By Mr. Rockwood:

Q. Do you find in shipping lumber from mills on the Milwaukee in the State of Washington that they have this wide open routing so that you can ship into North and South Dakota at points on the Great Northern and Northern Pacific as freely as you can ship to Milwaukee local points in Iowa?

A. We have got so little lumber on Milwaukee points in Washington and shipped them to a transit point in the midwest that I couldn't tell you what—

Q. If they had limitations on those routes in line with your desire to open up all routes as wide as possible, you would like to see the Milwaukee open up their routes on lumber they originate in that area for shipment back to points not served by the Milwaukee in North and South Dakota and Minnesota?

A. Your question is quite involved. Generally, I believe you mean would it be to our advantage for the Milwaukee to also give through rates and routes.

Q. You want everything opened up wide open?

A. As wide as could be. That would make our business better, I am sure.

Q. You say 25 per cent of your business is firm orders and 75 per cent is transit cars. Tell me, what percentage of your total business in each year terminates in territories [fol. 377] east of the Mississippi and north of the Ohio River?

A. I couldn't give you any percentage on that. Let's see, what were the boundaries?

Q. East of the Mississippi and north of the Ohio River, east of Chicago, we'll say, and north of the Ohio River.

A. A substantial part of it. I couldn't give you a percentage on it.

Q. Would it—

A. Five or 10 per cent?

Q. What?

A. Five or 10 per cent.

Q. Of your total?

A. Yes.

Q. That's a heavily populated area, and you sell only five or 10 per cent of your output—

A. Let me look at the map and see where it is.

Mr. Maguire: You can use this exhibit here.

Mr. Rockwood: Illinois, Michigan, Indiana, Ohio, Pennsylvania, New Jersey—that territory—New York.

The Witness: Now, will you point out the area?

By Mr. Rockwood:

Q. I say, east of Chicago and north of the Ohio River. The Ohio River is about the line of the gray—is it not—the southern boundary of the gray area on Exhibit No.—

Mr. Maguire: Seven.

By Mr. Rockwood:

Q. —No. 7; in other words, into the area outlined in gray [fol. 378] on Exhibit No. 7?

A. A substantial part of it. That includes—are you including Chicago in that?

Q. I will include Chicago.

A. Detroit and that area. A substantial part of our traffic goes in there.

Q. What do you mean when you say substantial?

A. Twenty-five or 30 per cent.

Q. And how much do you ship into the southeastern area, south of that gray line and east of the Mississippi River?

A. Well, a considerable amount. We have quite a few customers down in this area here.

Q. How much?

A. I don't have any figures, five or 10 per cent or 15 per cent.

Q. How much of your output do you ship into the southwestern states, including in that designation Arkansas, Oklahoma, Kansas, Texas, New Mexico?

A. Well, maybe another 25 or 30 per cent of this territory there.

Q. We have gotten up now to about 70 per cent.

A. I haven't been keeping track.

Q. Where does the rest of it go?

A. Well, the rest of the country.

Q. How much do you ship into the State of Iowa, for instance, now?

A. Well, we ship some lumber in there.

[fol. 379] Q. How much into the State of Wisconsin?

A. Ship some there, too.

Q. Do you have any difficulty getting into Wisconsin territory under the present rate adjustment?

A. Well, there would be some points that we would have a little difficulty getting into.

Q. Name the points that you are referring to.

A. Well, if you will refer to this map--

Q. Which map?

A. Exhibit No. 9, I believe it's referred to as.

Mr. Maguire: Might I ask that question be clarified? Do you mean via the Milwaukee Spokane or via Minnesota Transfer?

Mr. Rockwood: Will you please—

Mr. Maguire: I just want to clarify the question.

Mr. Rockwood: I said, do you have any difficulty in getting into Wisconsin, and please don't instruct the witness.

The Witness: Well, there might be some places there. I don't know of any specific instances where we have trouble, no.

By Mr. Rockwood:

Q. In all of that territory in Wisconsin, the whole State of Wisconsin, can't you reach that through Minnesota Transfer via the Great Northern, Northern Pacific?

A. I believe it would exclude these points here, wouldn't it?

Q. Which points are you referring to?

A. Some of these yellow-marked points.

[fol. 380] Q. I say, is there any point in the State of Wisconsin that you cannot reach on joint through rates with the Northern Pacific and the Great Northern to the Twin Cities and movement by, we'll say, Milwaukee or Northwestern or Burlington or Great Western or M&St. L, or Illinois Central or Rock Island beyond?

A. Frankly, that's a technical question I couldn't answer and be truthful.

Q. Do you have any trouble getting into, we'll say, the eastern third of the State of Iowa at the present time?

A. That, again, is a technical question I couldn't truthfully answer.

Q. You don't know whether you have the trouble or not. Do you have any trouble getting into the western part of the State of Iowa at this time?

A. Western part of the State of Iowa? There might be some points we have trouble with. Again, I couldn't answer. I don't have the information at my disposal.

Q. Are there any points in the State of Iowa that cannot be reached by the Great Northern and Northern Pacific via Minnesota Transfer?

A. That question I couldn't answer.

Q. You say that you buy 20 to 30 per cent of your lumber from mills on the SP&S and Oregon Electric. Name the principal points at which you purchase lumber from mills on the Oregon Electric or SP&S?

[fol. 381] A. The principal points, well, Eugene, of course, is the main one.

Q. Are the Eugene purchases included in the 20 to 30 per cent you say you bought from the SP&S?

A. Of course.

Q. All right, name others, will you please?

A. Well, there is Albany and Stevenson, Washington on the SP&S.

Q. If you take your purchases from Albany and Eugene, those two stations, how much would they represent of the total that you purchase from mills on the Oregon Electric?

A. Albany and Eugene?

Q. Yes.

A. A substantial part of it.

Q. As much as 75 per cent?

A. Maybe not quite. Maybe 30, 40 or 50 per cent.

Q. From each of the points?

A. No, from both the points.

Q. Now, what other points on the SP&S, other than Albany and Eugene, do you buy lumber from?

A. Stevenson, Washington.

Q. Yes, that's right, you named that one. Any others on the SP&S?

A. I can't think of any right now. If I had a list of our accounts, I could, of course, tell you.

Q. Stevenson, Washington, of course, is served only by [fol. 382] the one railroad, that is, that's the SP&S on the north bank of the Columbia River. How much of your total purchases in a year come from Stevenson, Washington?

A. I couldn't tell you exactly. Not very much in total percentage.

Q. How many cars do you purchase at Stevenson, Washington in a year?

A. Two or three hundred.

Q. And how many cars a year do you purchase at the mills at Eugene?

A. There again, I am guessing.

Q. And you would have to guess, if I asked you the same question with respect to Albany?

A. Yes.

Q. Now, of course, from Albany and Eugene, you can get service via the Southern Pacific?

A. That's right.

Q. So that, for your purchases from Albany and Eugene there are either the competitive rates and routes Southern Pacific to Portland, Union Pacific, Marengo, Washington and thence Milwaukee or Southern Pacific to Ogden, Union Pacific, Omaha and thence via connecting lines, is that correct?

A. State that again.

Q. I say, when you purchase at Albany and Eugene, you have the choice of using the Southern Pacific via a route to [fol. 383] Portland thence Union Pacific to Marengo, Washington, thence Milwaukee into this Iowa territory served by the Milwaukee, or you can ship that Southern Pacific to Ogden, thence Union Pacific to Omaha and thence beyond by connections into this same territory?

A. That's right.

Q. So that then it comes down to the fact that there is a very, very, very small percentage of your total lumber purchases which come from points on the SP&S or Oregon

Electric that does not have available service via the Southern Pacific or Union Pacific, isn't that right?

A. That might be true into this area, yes.

Q. Into this particular area we are talking about?

A. Yes. That would be on firm order shipments. We have no desire to go any further.

Q. Well, I say, out of your total lumber sales, there is a very small percent that is limited in routing from the mills by the Oregon Electric or SP&S. That's correct, isn't it?

A. That's right.

Q. To any territory?

A. Well, I guess so.

Q. You don't place the orders for cars for outbound loading of lumber, do you?

A. No.

Q. The mills from whom you buy place those orders?

A. The orders for cars?

[fol. 384] Q. The orders for cars.

A. We place no orders for cars.

Q. For empties, I mean, for loading.

A. No.

Q. Your statements about the periodic car shortage are just your general information that you have read in the newspapers of car shortages out in the fir region?

A. We got it straight from the mills.

Q. You don't personally participate in the effort to get cars?

A. No.

Q. Whether or not, if the Milwaukee had these joint through rates, there would be more cars available, you can't say, can you?

A. No, of course, I can't.

Q. Did your company ever file an application with any officials of the SP&S System or with any freight bureau for the publication of rates which the Milwaukee is seeking in this case?

A. No.

Q. Did you ever file any application with similar people for application of Oregon Electric rates off the Santiam

Branch the same as applied from the main line Oregon Electric points?

A. No.

Q. When were you first approached by the representatives of the Milwaukee suggesting that you testify in this case?

A. I don't recall the date. Quite some time ago.

Mr. Maguire: Just a moment. I think it's only fair to [fol. 385] the witness to call to his attention, Mr. Examiner, that there is a premise in that question which may or may not be correct, and I think the witness should be warned that this is a trapped question. in my opinion—

Mr. Rockwood: I certainly—

Mr. Maguire: Let me finish my remarks, please—and that is the question, when were you first approached by representatives of the Milwaukee railroad, suggesting that you testify in this case? I just want the witness to understand what that question is before the answer is given.

By Mr. Rockwood:

Q. All right, with that instruction, when were you first approached by a representative of the Milwaukee to discuss this case in any of its aspects?

A. I don't recall the date. Several months ago.

Q. Was it in 1953, in the fall of 1953?

A. No, early this year.

Q. January?

A. January or February.

Q. About that time?

A. Yes, as I recall.

Q. Was the suggestion made that you prepare yourself to testify in this case?

Mr. Maguire: If there was a suggestion—I object to that last question.

Exam. Dishman: Well, the witness may give his version [fol. 386] of it. Just what did happen?

The Witness: I don't recall the date or the time or any place.

By Mr. Rockwood:

Q. Well, was it yesterday or a few months ago?
A. A few months ago.

Mr. Rockwood: I have no other questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Knutson, on this last matter which has just been discussed here, I wish you would characterize for the record as to whether Milwaukee representatives suggested that you testify or whether they inquired whether you were interested in testifying or just what the tone of the conversation was.

A. They inquired whether or not I would be interested in supporting the complaint and asked if we would be interested.

Q. I see, and when you were answering Mr. Rockwood's questions as to these dates and times, are those the circumstances that you had in mind, that is, the inquiry whether you would be interested?

A. That's right.

Q. And have you been approached by representatives of either the SP&S or Oregon Electric, that's the SP&S, of course, or the Northern Pacific or Great Northern in connection with this case?

A. Yes.

[fol. 387] Q. Did they suggest to you that you not testify in this case?

A. No.

Q. They did not?

A. No, they did not.

Q. What was the nature of their conference with you?

A. Well, they were explaining the standpoint of the SP&S and Oregon Electric situation, how they thought they were justified in not accepting the proposal, defending themselves.

Q. And I think it goes without saying they took kind

of a dim view of the proposal of the Milwaukee, didn't they?

A. Generally, yes.

Q. Now, you stated to Mr. Rockwood that the mills placed the orders for cars. If the mill selects the cars or places the orders or gets the cars—I am talking about a mill that is served by both the Southern Pacific and the Oregon Electric, do you find it practicable or possible, if the mill secures a car from the Southern Pacific, to route it out Oregon Electric?

A. Generally, the mills are very reluctant to do that.

Q. And vice versa?

A. That's right.

Q. Is it the same situation?

A. Same situation.

Q. Now, do you know whether all of the mills from whom you buy in the Eugene and Albany area actually have trackage running to their plants from both the Southern Pacific and the Oregon Electric?

[fol. 388] A. No, I don't know that.

Mr. Maguire: That's all I have.

Recross examination.

By Mr. Rockwood:

Q. On that last question of Mr. Maguire's, it's a fact, is it not, that both the Southern Pacific and the Oregon Electric at Eugene absorb switching charges on competitive traffic to and from points served only by one of them?

A. Competitive traffic, yes.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. Those are switching charges, yes, but does that question cause you to reconsider or change your answer that

mills are very reluctant to send out an Oregon Electric car, for example, over the Southern Pacific and vice versa? Does that change your answer?'

A. I don't think the cost of the switching has anything to do with the reluctance on the part of the mill to order a Southern Pacific car and ship it out northern lines and vice versa. The cost of the switch there is of small value. The thing they did not like to do is order a Southern Pacific car and ship it Great Northern because the Southern Pacific, naturally, furnishing a car, wants to get the line haul back, and the same way on the northern lines, if they get a car from the OE and ship it out Southern Pacific, the northern lines don't like that any better.

Mr. Rockwood: Do you know—it looks as though Mr. [fol. 389] Maguire and I are going to bandy the rest of the morning—was there a single day in 1953 when a mill at Eugene ordered a box car or any other type of car for lumber loading over the Oregon Electric that it wasn't able to get the order filled?'

A. I don't know as a matter of fact.

Mr. Maguire: You don't know of a single day, or one way or the other?

The Witness: I don't know of a single instance because I am not close to the mills' problems in cars.

Mr. Maguire: Is it fair to say you don't know one way or the other about it?

The Witness: Yes.

Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. Wicker.

GEORGE R. WICKER was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Will you state your name to the reporter, please?
A. George R. Wicker.

Exam. Dishman: How do you spell your name?
The Witness: W-i-c-k-e-r.

By Mr. Maguire:

Q. And what is your business, Mr. Wicker.
[fol. 390] A. Mill agent and wholesaler.
Q. Of lumber?
A. Lumber.
Q. And where is your place of business?
A. It's at 2035 S. W. 28th Avenue.
Q. In Portland?
A. In Portland.
Q. And do you specialize in any particular lumber or forest products or class of products?

Exam. Dishman: Just a moment. Did he state his firm?

By Mr. Maguire:

Q. I beg your pardon. Who runs or owns the business with which you are affiliated?
A. I do, and operate under my own name.

Exam. Dishman: Just—
The Witness: Just George R. Wicker.

By Mr. Maguire:

Q. And from the point of view of value of the product in which you deal—well, I think there is already a question before the house here. I will go back to the first one. Do you deal in any particular specifications, kinds, species or variety of lumber or forest products?
A. Yes, deal almost, I would say, 90 per cent in specialties.

Q. Now, will you tell us what specialties, and will you speak up?

A. Well, cut stock jambs, frames, plywood, various items of millwork, mouldings and particularly in mixed carloads, [fol. 391] containing a part of the car of these specialty items and a part of a car of lumber.

Q. Do these specialty items run into high values or cost per car?

A. They frequently run from, oh, say ten to $20,000 per car.

Q. And what would you, in order for us to make comparisons, what would you say is the ordinary value of a car of just run of the mill lumber?

A. Well, depending on the grade, from $2500 to $3500.

Q. Do you deal in firm orders or in transit cars or both?

A. Firm orders only.

Q. Do you buy any substantial portion of the lumber and types of forest products in which you deal from points served by the SP&S or the Oregon Electric?

A. Yes, we do.

Q. Can you give me an idea of the percentage that you buy from any portion of the SP&S and Oregon Electric?

A. I would estimate that approximately 15 or 20 per cent.

Q. Of the total amount?

A. Of the total amount.

Q. And do you buy any from points on the Santiam Branch of the Oregon Electric known as the Sweet Home Branch?

A. Yes, we do, particularly Sweet Home and Lebanon.

Q. Now, will you state whether or not you were approached by representatives of the Milwaukee Road with [fol. 392] respect to this proceeding?

A. Yes, I have been.

Q. And will you just state generally what the nature of that contact was?

A. Well, one of the gentlemen from the Milwaukee Road came in and asked me if I would be interested in appearing at this hearing and I told him at the time that it was an opportunity to get something off my chest that had been there for a long time, as it had been. I felt that

certain restrictions in the tariff prevented free trade and a full line of rates.

Q. Well, now that you have the opportunity to get it off your chest, will you go ahead and do it? Tell us how all these additional rates which are proposed here would benefit your business. Now, I just simply wish to call your attention to a map already introduced in evidence here, and I will explain very briefly—

Mr. Rockwood: Mr. Examiner, this gentleman has something to get off his chest, and presumably, he knows the rate situation with which he expects to deal, and I object to Mr. Maguire's summarizing the evidence heretofore offered by other witnesses, to tell this witness what the rate situation is. I suggest that he let the witness tell what the rate situation is, as he sees it, and what he thinks is wrong with it. I object to a summarization of the testimony of prior witnesses as to what the rate situation is. This witness must know for himself.

[fol. 393] Exam. Dishman: You did state you wanted to get something off your chest?

The Witness: That's right.

Exam. Dishman: Could you do that first before going into this?

Mr. Maguire: I will withdraw the question for the time being only.

Exam. Dishman: All right.

The Witness: In my particular line of business, we serve quite a number of small cities where there are lumber yards of not sufficient size to purchase a car of lumber, a complete car of lumber, complete car of mouldings or complete car of jambs. They just don't have that kind of money, and a full line of rates into these smaller cities is extremely helpful to us, particularly with the fact in mind that we frequently have to stop to complete loading at such points on the Milwaukee as St. Maries, Idaho and I just put up to the Public Utilities Commission at Salem about 30 days or 45 days ago a letter complaining about the restrictions where I could not start a car at, say, Sweet Home, Oregon and proceed to ship it through to St. Maries, Idaho to complete loading and serve a great

deal of the eastern territory, where it actually restricted our operation, and in this particular instance, I cited the car number and date of shipment and so forth and the gentleman from the Public Utilities Commission came out to see me, and frankly—

Exam. Dishman: The Public Service Commission of Oregon?

[fol. 394] The Witness: Yes, and they asked me the question if I were doing this on behalf of the Milwaukee, at which time I stated, "No, I am doing it on my own behalf." I have no particular love for the Milwaukee or anyone else. I am purely selfish in this, and that is, I can see absolutely no reason why we should have a little tag-end railroad in the middle of the Oregon, serving the heart of Oregon or the heart of the fir lumber industry where we have restricted rates into certain territories.

Then, the matter of interchange of cars was brought up. Well, I have shipped out of Sweet Home for quite a number of years now, and I have never found that there was any great oversupply of cars in the Sweet Home area. Frankly, it's been very much the other way. I am one of the people who used to have to run around with a truckload of studs and throw them into a car and get it down to complete loading. To me, it seems it contributes to every sort of racket and chicanery you can get into to have to go to those lengths to obtain cars to ship out your lumber out of that area. That's about all there is to it.

Exam. Dishman: Do you do business throughout the United States?

The Witness: Yes, I do.

Exam. Dishman: On the matter, Mr. Maguire, of the explanation of this Exhibit No. 7—is that the one?

Mr. Maguire: Exhibit No. 9.

Exam. Dishman: I just wondered, there is a lot in the record about that. Of course, this witness, I presume, was [fol. 395] not present. You haven't been present until this morning?

The Witness: No, I haven't.

Exam. Dishman: But is it possible to get at that situation by asking questions rather than to have to explain

this to each witness, just for the benefit of the record, to keep the record as short as possible?

Mr. Maguire: I will try to do that as much as possible, Mr. Examiner.

The Witness: Excuse me, Mr. Maguire. I think I understand some of this. My difficulties have been largely in getting east of Mobridge, getting a full line of rates east of Mobridge, full line of rates off the Oregon Electric and the SP&S.

By Mr. Maguire:

Q. I would like to direct your attention to certain areas in here. Do you know generally where the Williston Basin area is, over in the western part of the Dakotas?

A. Yes, I do.

Q. Is there now and has there been a great deal of activity in construction work there?

A. I don't think there's anything unusual there that I have noticed.

Q. And in the Dakotas, generally, however, west of the Minnesota Transfer—well, of course, they are west of Minnesota Transfer—in the Dakotas generally, are there markets you would like to try for partload sales to small lumber yards which you cannot do at the present time?

[fol. 396] A. Yes, there are, but we do reach some of these points at the present time by shipping via other lines and obtaining our lumber elsewhere, but it's a hardship.

Q. Do you buy, have you in the past bought lumber in the State of Washington?

A. Yes, I have.

Q. And what has been your observation, your experience as to whether or not there is a shifting of the preponderance of production of lumber from Washington into the State of Oregon? Is your lumber production moving out of Washington?

A. Definitely, even moving south of Oregon.

Q. I see, and is it necessary in the successful conduct of your business that you have as many avenues or sources of supply as possible?

A. Yes, it is.

Mr. Maguire: You may cross examine. Oh, just one more question, I beg your pardon.

By Mr. Maguire:

Q. I am going to make a very brief summary of one point for the purpose of asking my next question. It has been testified that on rates from the SP&S into this territory in the Milwaukee covered by yellow, which, however, does not cover the Sweet Home Branch, that there are no diversion rights off the Milwaukee to other lines. Now, in the case of shipments which are sold on firm orders or shipped on firm orders, but are refused at destination, would it be of benefit to you to have a wide area other [fol. 397] than the Milwaukee territory itself for diversion purposes to dispose of any such rejected shipments?

A. Well, if I ever had one of my cars refused any place, it would be imperative that I have all the diversion privileges possible.

Exam. Dishman: Do you have many cars refused?

The Witness: Very few. I had, that I can recall, I had four, that is, in the last year.

By Mr. Maguire:

Q. You had four last year?

A. Yes, I did.

Cross examination.

By Mr. Rockwood:

Q. Where were those four billed to that were turned down?

A. Those four particular cars were billed into Merrill, Wisconsin.

Q. What part of the State of Wisconsin is Merrill, Wisconsin?

A. It's in the river district It's where the river mills are located.

Q. East of the Twin Cities, of course?

A. Yes.

Q. And what railroad reaches Merrill, Wisconsin?

A. I couldn't recall that. I'm sorry, I don't know what railroad serves it.

Q. What did you do with those cars?

A. Well, I just about had to eat them, but I finally managed to sell them in Wausau, Wisconsin.

[fol. 398] Q. Merrill, Wisconsin is on the branch line of the Milwaukee extending north from New Lisbon to Woodruff, I believe, in Wisconsin, is that correct?

A. I believe that's correct.

Q. Is it served by any other railroad, do you know?

A. I wouldn't be familiar with the railroads that serve Merrill.

Q. If you got that car up there at Merrill, Wisconsin on the Milwaukee and it were turned down, would you be able to divert that to some other points without additional charge?

A. I would be able to divert it to some point on the Milwaukee.

Q. Would they allow diversion with the backhaul from a point near the end of a branch line, do you know?

A. I know it would be contrary to policy.

Q. Your complaint that you addressed to the representative of the Public Utilities Commission of Oregon had to do with the lack of rates off the Santiam Branch on the same basis that applied from Albany, Oregon, is that correct?

A. I am not familiar with the Albany, Oregon situation at all.

Q. Well, or from Eugene, any of the points on the Oregon Electric.

A. I am just particularly interested in Lebanon and Sweet Home.

Q. If that situation were corrected and the same through rates made applicable to the Santiam Branch as are applicable from other points on the Oregon Electric, you would be satisfied?

A. That would be difficult for me to say because I don't know what other points you are referring to.

[fol. 399] Q. Well, if joint through rates were available from points on the Santiam via the Great Northern, North-

ern Pacific to Minnesota Transfer and points beyond to Chicago as now apply from Eugene, over the Southern Pacific and to Omaha and connections beyond to Chicago, you would be satisfied, wouldn't you?

A. I would only be satisfied with one condition and that is, if we can get a car started at Sweet Home and stopped out in Idaho to complete loading on a Milwaukee point without paying a penalty for it. I am not familiar with all of your railroad tariffs. I haven't the slightest idea what you are talking about.

Q. What kind of lumber is manufactured at St. Maries?

A. They particularly manufacture a line of relatively high quality kiln dried products in pine, Douglas fir, white fir, some cedar. They are all items like I can't load a part car of mouldings or part car of fir finish and start it out and complete loading with green lumber with any degree of safety. I have to complete loading with kiln dried products.

Q. There are a good many other mills in Idaho that furnish the same grade of lumber as that of the St. Maries mill?

A. I would say so.

Q. And there are mills in Montana up along the Great Northern that produce that high grade pine lumber, isn't that true?

A. Well, there are mills that produce high grade and low grade.

Q. Libby, Montana on the Great Northern produces a lot of dry pine, doesn't it?

[fol. 400] A. That's correct.

Q. And you would have the opportunity to buy from some mills along there if you wished to do so, in preference to St. Maries?

A. No, not always.

Q. And can you always get at St. Maries everything you want?

A. Most of the time we have been able to, yes.

Q. But sometimes you can't even get what you want from St. Maries, sometimes?

A. Well, within the limits of production.

Q. When did you first discuss this case with any representative of the Milwaukee?

A. I would say about two years ago, two to three years ago.

Q. By a representative of the Milwaukee?

A. Not this case, but this situation.

Q. You discussed it with a representative of the Milwaukee?

A. Yes, I did.

Q. Yes, and did you have further discussions with him in the fall of 1953?

A. Yes, I did.

Q. Did they at that time show you a draft, a printed draft of a complaint they proposed to file?

A. Yes, they did.

Q. And it was after that, was it not, that you had discussions with the SP&S and Oregon Electric officials relating to this case?

[fol. 401] A. That's true.

Q. Actually, it would be to your interest to have a full line of rates without restrictions of any kind on the lumber routing all over from all points in the Pacific Northwest extending down to the California line for marketing throughout the United States, isn't that correct?

A. No, I wouldn't say so.

Q. It wouldn't help you?

A. The only ones that I am familiar with are the restrictions by which, through which we have had to pay a penalty rate which has rendered us non-competitive in the eastern markets.

Q. At Sweet Home?

A. That's right.

Mr. Rockwood: That's all.

Mr. Maguire: Nothing further.

Mr. Rockwood: Wait a moment—excuse me.

By Mr. Rockwood:

Q. How many carloads a year do you sell?

A. I would say an average of about 150 cars per month.

Q. Where is the major market for that that you sell?

A. Well, it varies. It varies. At times the market is in the middle west where it is excellent. At other times the bidding drops off there and we find ourselves suddenly turning to marketing in the southeast. We have no fixed market. It's all over the country as the building progresses.

Q. Did you deliver an order at a point local to the Mil-
[fol. 402] waukee in the State of Iowa?

A. Would you repeat that question?

(Question read.)

A. Well, I have never declined an order from a well rated person provided that I could get the lumber there without paying a penalty for it.

Q. Now, will you please answer the question? That does not quite answer it. Will you read the question again?

(Question re-read.)

A. I don't know. I would have to check my records.

Mr. Rockwood: That's all.
Exam. Dishman: Any more?
Mr. Maguire: Not any more.
Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will now take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order.
Mr. Maguire: Call Mr. Hutchins, please.

J. M. Hutchins was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. State your full name, please.
A. J. M. Hutchins.
Q. And where do you live, Mr. Hutchins?
[fol. 403] A. Portland.

Q. And in what business are you engaged?

A. Wholesale lumber.

Q. And with what wholesale lumber firm are you connected?

A. Fleishman Lumber Company.

Q. And do you deal more in what is called in the lumber business, transit cars or in firm order shipments, or both?

A. We deal in both.

Q. Could you give us an approximation of the proportions, which proportions of your business are divided between those two?

A. Approximately 60 per cent firm business and 40 per cent transit.

Exam. Dishman: Just to make the record clear, now, firm business, that would be orders placed directly with your concern?

The Witness: Yes.

Exam. Dishman: Sold before you make the shipment?

The Witness: Right.

Exam. Dishman: Did you state what your position is with the company?

The Witness: Sales manager.

By Mr. Maguire:

Q. And as sales manager, do you have anything directly to do or do you maintain contact with the purchases made by your firm?

A. Yes.

Q. From what sources do you buy your lumber in the [fol. 404] Pacific Northwest?

A. Sawmills.

Q. And geographically, where are these mills located?

A. From northern California up through into Canada.

Q. Do you buy any substantial portion of your lumber on the SP&S System, which includes the Oregon Electric and Oregon Trunk Railways?

A. Yes.

Q. Do you buy on both the Oregon Trunk and Oregon Electric?

A. Yes.

Q. Do you buy lumber on the Santiam Branch of the Oregon Electric?

A. Yes.

Q. And I wonder if you could tell us very briefly as to the amount and quality of lumber that is available for purchase along that branch as to whether it's good lumber, plentiful supply and so forth?

A. Yes, as good as any lumber produced, and there is quite a bit of it.

Q. Now, in any of the cars which you load in the Pacific Northwest, do you make stops to complete loading?

A. Oh, yes.

Q. I will invite your attention to the line of the Milwaukee Railroad east of Spokane. Do you complete loading at any points located on the Milwaukee?

A. Not east of Spokane.

[fol. 405] Q. How about St. Maries, Idaho?

A. We have. It's rather difficult to do it for one thing.

Q. For what reason?

A. Most of the time you can't stop at St. Maries.

Q. And when you say that, you are referring to lumber originating on the SP&S System?

A. That's right.

Q. In particular?

A. Yes.

Q. And if, on rates off the SP&S and also particularly off the Santiam Branch, if you could, under the routes and privileges and rates, stop to complete loading at St. Maries, would you avail yourself of that privilege more than you do at the present time?

A. Yes.

Q. And have you looked into the question of a potential market for Oregon lumber in eastern Montana and in the Dakotas?

A. That is a very good market for it there.

Q. And under the present rates and routes, are you able safely to route cars into that part of the country from SP&S points?

A. No.

Mr. Rockwood: You mean, via the Milwaukee? Was that inherent in your question?

Mr. Maguire: Well, I guess my question wasn't complete enough.

[fol. 406] By Mr. Maguire:

Q. So far as those portions of eastern Montana and the Dakotas served by the Milwaukee are concerned?

A. No, you can't do it.

Q. And does that refer, in that answer, does that refer to shipments from the SP&S?

A. Yes.

Q. I believe you stated you do buy also from mills on the Oregon Trunk Railway?

A. Yes.

Q. And what species of lumber come mainly from those mills?

A. Douglas Fir.

Q. Is there pine produced over there?

A. Yes.

Q. Do you get any pine off the Oregon Electric?

A. No.

Q. That's all fir country?

A. Yes.

Q. And other species. Now, have you had any inquiry or difficulties with respect to making sales in the Dakotas?

A. Well, the first of this year we were furnishing quite a lot of lumber of a certain type, a low grade lumber used in the manufacture of grain elevators, and we really specialized in it for awhile and one of the, in several instances, two of which come to my mind, one of them was a town on the Milwaukee, Seeland, North Dakota—

[fol. 407] Mr. Rockwood: Seeland?

The Witness: S-e-e-l-a-n-d. Another was Wagner, South Dakota. We happened to have had quite a block of this low grade lumber bought on the SP&S at Sweet Home, and we sold it, intending to furnish it out of this stock and found we simply couldn't get the lumber up there because the rates would not apply. Well, the profit margin in it is not such that we can absorb any excess rate, that's a cinch.

By Mr. Maguire:

Q. To get off that subject just a moment here, what is the average volume of shipments per month or per year that you handle, your firm handles?

A. Oh, around 200 cars a month.

Q. Well, when you are filling orders or trying to fill orders in response to the inquiries made by customers, do you have an unlimited source of supply on any given date so far as the geographical locality of your source of supply is concerned? Can you just go out any day and buy any kind of lumber any place?

A. No.

Q. And I will ask you whether it would be desirable from the point of view of the operation of your own business, to have routes from all parts of the SP&S through Spokane, Washington to all points on the Milwaukee Road or their connections? By connections, I mean, east and south and southwest of Chicago.

A. It would definitely be an advantage.

Q. Will you state whether or not it is a convenience in [fol. 408] the transaction of your affairs to have available routes which do not have dead-end or technical restrictions?

A. Yes. The simpler the routes are, the better off it is as far as we are concerned.

Q. Now, in the business of wholesaling lumber, of course, you are looking for customers. State whether it is necessary for you also to compete with respect to getting your supply, to make your purchases from the mills with other wholesalers?

A. Yes.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. What you want, is it not, is a wide open route by all routes from all sources to all parts of the United States? That would be desirable?

A. That would be.

Q. And to your advantage?
A. Yes.
Q. Really, that's what you are asking for here?
A. I imagine that's just about it.
Q. Where is Seeland, North Dakota?
A. It's a town in North Dakota.
Q. Where in North Dakota?
A. Located, what is it near or something?
Q. Where is it?

Exam. Dishman: What rail line is it on?

[fol. 409] The Witness: It's on the Milwaukee. Here it is, right here.

By Mr. Rockwood:

Q. You are pointing to a Seeland on the branch line of the Milwaukee extending from—what is that junction, Tom?

Mr. Maguire: Roscoe to Linton.

Mr. Rockwood: To Linton, North Dakota and just north of the boundary between North and South Dakota.

By Mr. Rockwood:

Q. How far away is there another railroad, do you know, either the Northern Pacific or the Great Northern?
A. I don't know.
Q. What was the other point you named in South Dakota?
A. Wagner.
Q. Where is Wagner, South Dakota?
A. Well, let's see.
Q. That's on the branch of the Milwaukee extending from—what is that station, do you know, Tom?

The Witness: Yankton.

By Mr. Rockwood:

Q. Well, it starts—
A. No, Napa.
Q. Extending out to—

Mr. Maguire: Platte.

By Mr. Maguire:

Q. Extending to Platte, and it's a station which is near the boundary between South Dakota and Nebraska, is that right? That's correct, is it not?

A. Correct, yes.

[fol. 410] Q. How far is that from any other railroad, do you know?

A. I don't know.

Q. Is it served by any other railroad?

A. No. To the best of my knowledge, there is no other railroad in there.

Q. You say off the Oregon Trunk, you get both fir and pine?

A. Well, as far as my purchases are concerned, they are all fir, Douglas fir.

Q. But the major production in that territory east of the Cascade Mountains on the Oregon Trunk is pine, is it not?

A. That's right.

Q. There is no point on the Oregon Trunk served by the Oregon Trunk Railway which is not likewise served by the Union Pacific, is there?

A. I wouldn't know.

Q. As a matter of fact, they run on the same rails all the way from Wishram to Bend, do they not, or from the Union Pacific junction on the south side of the Columbia River southward to Bend on the same tracks, do they not?

A. It isn't something I have great knowledge of.

Q. So that, if that is a fact, whatever rates are available to, whatever the rate situation may be with respect to Oregon Trunk routes, every station over there on the Trunk likewise has the service of the Union Pacific. That's correct, isn't it?

A. That's correct, if they use the same track.

[fol. 411] Q. They serve the same towns, don't they?

A. I don't know.

Q. You have never investigated that?

A. No.

Q. You don't know, then, what the difficulty is?

A. I never had any difficulty on the Oregon Trunk.

Q. You are quite happy with everything off the Oregon Trunk?

A. Yes, as far as I am concerned.

Q. Well, now, you buy all the way from Canada to the northern part of California west of the Cascade Mountains, do you not?

A. Right.

Q. Do you buy from points local on the Milwaukee in Washington?

A. Yes.

Q. Where are those points located?

A. Oh, Seattle.

Q. My question possibly wasn't clear. I meant local to the Milwaukee and served by no railroad other than the Milwaukee.

A. I don't recall of any particular one.

Q. Did you ever buy lumber off the Olympic Peninsula served by the Milwaukee?

A. Yes.

Q. Have you bought lumber on the Milwaukee branch north of Bellingham?

A. Possibly, but not very much.

Q. Do you ever buy any lumber off the line of the Milwau- [fol. 412] kee that extends over toward Grays Harbor?

A. Right in Grays Harbor, but I don't think right off that branch line. The fact is—

Q. Is that served by the Milwaukee?

A. I didn't even think the Milwaukee went in there, to Grays Harbor.

Q. It runs over toward Grays Harbor, reaches Hoquiam, Aberdeen, Washington—from the time table map I have here—and I guess you don't show your line west of Spokane on that?

Mr. Maguire: I think maybe I can help you a little bit. Yes, it shows the line down here to Aberdeen and Hoquiam.

By Mr. Rockwood:

Q. The fact is, they do get into the Grays Harbor territory, don't they, Hoquiam and Aberdeen?

A. Yes.

Q. Did you ever buy any off the Metaline Falls branch

of the Milwaukee extending on toward the Canadian border just east of Spokane?

A. I think we have had some rough lumber mills through our plant in Spokane from off that I ranch.

Q. Do you have wide open routes from those points served only by the Milwaukee everywhere in the United States, do you know?

A. No, I do not know.

Q. If you don't, you would like to have them, is that right?

A. Yes, absolutely.

Q. Yet, if the Milwaukee does have a policy—I am not [fol. 413] saying it does—if it does have a policy of retaining to itself the long haul to points west of the Twin Cities on lumber originating at points local to its line, you don't think that's good?

A. Would you repeat that question?

(Question read.)

Mr. Maguire: Before the witness answers that question, I don't believe that is material in this case and does not have any bearing upon the issues because we are not proposing here to short haul the SP&S a single mile. The SP&S System is the defendant in this case, and so that, therefore, is a matter of drawing theoretical or hypothetical, invidious comparison between short hauling one railroad and not short hauling another, which we do not propose to short haul the SP&S at all. They will get the full length of their haul. I maintain that type of cross examination is not material.

Exam. Dishman: What is the purpose of it?

Mr. Rockwood: If my question is invidious—

Mr. Maguire: Strike that.

Mr. Rockwood: Mr. Maguire is rather sanctimonious. Of course, they are trying to short haul the Northern Pacific and Great Northern, and, of course, Mr. Maguire appreciates there is an issue in this case as to whether the Northern Lines and the SP&S are under common management or control within the meaning of Section 15 (4) of the Act.

Exam. Dishman: What is the purpose?

[fol. 414] Mr. Rockwood: I want to lay a basis for an argument, if I ever have occasion to make it, that every lumber shipper wants just as many routes as he can have, and if one railroad, for instance, the Milwaukee has a policy of retaining to itself its long haul business, and if that's the policy which is being advocated in this case by the Northern Lines, it's not unique to the Northern Lines, and the Northern Lines cannot be condemned for doing it.

Exam. Dishman: I want the witness to answer. You do want all the open routes possible?

The Witness: Well, the thing that got me was just these two little places here. In other words, I could see no reason why I shouldn't buy lumber off the SP&S and ship it to a local point on the Milwaukee Railroad without any difficulty and with the same rate I could have shipped it off the Southern Pacific to the same point, which I subsequently did.

By Mr. Rockwood:

Q. What was the origin point on the SP&S on which you had that difficulty?

A. That was Sweet Home, Oregon.

Q. On the Santiam Branch?

A. Yes.

Q. You realize that from all points on the Oregon Electric which are served likewise by the Southern Pacific, there are joint through rates via the Southern Pacific and Union Pacific, Marengo, and Milwaukee beyond? You know that, don't you?

[fol. 415] A. I think that's true. I don't set myself up as any rate expert at all.

Q. Because you found limitations at one of the numerous purchasing points in the Willamette Valley where there was no open route to Seeland, North Dakota, you feel unjustly treated?

A. Not unjustly treated, particularly, except it costs us time and money to overcome it.

Q. You filled the order, didn't you?

A. Certainly, always fill our orders.

Q. From another source?

A. Yes.

Q. You had no difficulty?

A. Considerable difficulty, late and so forth.

Q. You filled the order?

A. Of course.

Q. You say you ship about 200 cars per month, is that right?

A. Approximately. The figure will vary.

Q. How many of those come from points on the SP&S, Oregon Electric and Oregon Trunk?

A. I wouldn't know. I haven't looked it up.

Q. As much as 10 per cent?

A. Oh, I would say more than that.

Q. How many come off the Trunk?

A. Not very many.

Q. How many come from the Santiam Branch?

[fol. 416] A. Oh, probably—it varies from time to time depending on what is available there, what we have sold, but on the average, probably 20 cars, 20 to 30.

Q. A month?

A. Yes.

Q. How many from other points in the Willamette Valley north of Eugene?

A. Forty or 50.

Q. How many from Oregon mills south of Eugene and west of the Cascade Mountains?

A. Lately, not very much.

Q. There is a large fir production south of Eugene, is there not, served by the Southern Pacific down around Roseburg and Medford?

A. Yes, which is mainly going into a market where they have a great advantage on which we haven't been selling in too much lately.

Q. In other words, going to a market—

A. California or Texas points.

Q. Or via Ogden to Omaha, is that right?

A. Well, that's the general transit route through there, one good one, but their main business is California because they have a rate advantage to California and a rate advantage to Texas.

Q. You say about 50 cars a month out of the Willamette Valley other than the Santiam. How many of those—that's

about 25 per cent of your total production—how many of [fol. 417] those are from mills served by the Southern Pacific?

A. I would say 100 per cent of them.

Q. One hundred per cent of the 50?

A. Yes.

Q. So that, if you ship 200 cars a month, 20 cars off the Santiam and 10 per cent of your total comes off the Santiam Branch, everything else in the Willamette Valley can also be served by the Southern Pacific?

A. We haven't been doing too much purchasing down there lately.

Q. These are the figures you gave. I am following your own arithmetic. Of those 20 cars a month off the Santiam, how many moved to destinations on the Milwaukee?

A. There may be times when there wouldn't be any.

Q. Have you ever had difficulty—

A. We don't have, you understand, a set group of customers. We supply, we deal all over the country. We may have orders here today and maybe six months will go by before we get another one.

Q. Your practice of what is called transit cars, starting a car out and not having it sold before it starts rolling, where do those cars end up, the most of them?

A. Oh, you mean, if they aren't sold in transit, where do they finally get?

Q. Where do they finally unload that start out as transit cars, in what part of the United States?

A. East of the Mississippi River, usually.

[fol. 418] Q. Is there any town east of the Mississippi River that can't be reached by the Northern Lines via the Twin Cities on through rates?

A. None that I know of.

Q. So, for the most of your transit cars, they go to territories that can be reached by the northern routes, Great Northern and Northern Pacific to the Twin Cities?

A. I wouldn't say most, but occasionally.

Q. How many cars do not come within the category sold east of the Mississippi River?

A. I couldn't tell you.

Q. As many as five a year?

A. Oh, yes, considerably more. There is no limit on it. Depends on where the market is hottest.

Q. That's one I picked out of the air, the five a year. As many as five a month?

A. Yes, considerably more than five a month.

Q. How many, a month, ends up west of the Mississippi River?

A. You are talking about my business now?

Q. Yes.

A. Oh, I would say, possibly 30 or 40 of them.

Q. And how many end up in Minnesota?

A. Probably half.

Q. How many end up in Iowa?

A. Of course, you see, this is all just guessing. I haven't [fol. 419] any facts here, just thinking about it.

Q. I am trying to get a general picture of your business.

A. In our business two or three would end up in Iowa.

Q. What towns in Iowa?

A. Des Moines.

Q. Des Moines, Iowa—

A. Is one.

Exam. Dishman: Did you state for the record just the location of the Santiam Branch, which was made reference to, just where is that?

The Witness: The Santiam, S-a-n-t-i-a-m.

Exam. Dishman: Where is that located?

The Witness: You mean the county or something?

Exam. Dishman: Well, they are talking about—

The Witness: Well, Sweet Home is one of the towns on the branch line running off into this particular timber area.

Exam. Dishman: From what place? Is it Corvallis?

The Witness: No.

Mr. Rockwood: A point near Albany, a junction.

Exam. Dishman: And extends to Sweet Home?

Mr. Rockwood: Dollar, I believe, is the end of the line.

By Mr. Rockwood:

Q. Des Moines is a point. You have joint through rates on lumber to Des Moines now, do you not, via the Great Northern and Northern Pacific to the Twin Cities and thence

a connection to Des Moines, so that if you started a car roll-
[fol. 420] ing over the Great Northern and Northern Pacific, you could divert to Des Moines, could you not?

A. Oh, yes.

Q. You could divert to a large portion of eastern Idaho on through rates, could you not? I mean, eastern Iowa?

A. I think so.

Q. And you could divert to a portion of eastern Missouri on through rates via the, Milwaukee points in Missouri via the Twin Cities, could you not?

A. I think that's true.

Q. And you could divert to all of Wisconsin and Illinois via the routes through the Twin Cities, Minnesota Transfer?

A. Yes.

Q. So that, except to the Milwaukee territory generally in western Iowa, you can reach all of the Milwaukee points via Minnesota Transfer, could you not, on through rates?

A. I think that's true.

Q. And the only advantage to you would be, then, that if you shipped Milwaukee, you would be unable to divert the car east as you already can now do via the northern routes, isn't that right?

A. Sounds correct.

Q. So that, what do you gain by getting some diversion privileges off the Milwaukee route that you don't have now insofar as it would help you to reach the market into which [fol. 421] you actually sell lumber, the major part of your lumber?

A. I don't see any particular advantage.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. Now, Mr. Hutchins, I think that some of this cross examination which was necessarily in the form of leading questions, you were questioned as to whether or not you could not reach all of this midwestern territory except possibly western Iowa through Minnesota Transfer by the northern routes.

A. Yes.

Q. How about this territory on the Milwaukee, local on the Milwaukee west of Minnesota Transfer? Can you go in via the Great Northern and backhaul the Dakotas without penalty?

A. No.

Q. Can you get into southwestern Minnesota through the Transfer via the northern routes off the SP&S without paying a differential or arbitrary backhaul into that territory?

A. No.

Q. Can you get out on to any of the lines in South Dakota, having come in through Minnesota Transfer and come out to Milwaukee points without paying a penalty?

A. No, eastern territory is the only thing you can go into.

Mr. Maguire: That's all.

Recross examination.

By Mr. Rockwood:

Q. Well, you have joint rates from all points on the SP&S [fol. 422] except the Santiam Branch into South Dakota at all points on the Milwaukee, haven't you?

A. No, I don't think so.

Q. Except the Santiam Branch. I am not saying with transit, but you have the rates to all Milwaukee destinations shown in yellow in this map you are looking at from all SP&S points except the Santiam?

A. As I told you, I am not a rate expert. All I know is, we have had these two towns which I named to you that we couldn't get into.

Q. That was from the Santiam. I say, except from the Santiam.

A. I don't know anything else about that.

Q. Except for the Santiam, you could have gotten into Seeland from every point on the SP&S, except the Santiam, couldn't you?

A. I don't know.

Q. You could have gotten into Wagner from every point on the SP&S except the Santiam?

A. I don't know that either.

Q. If that's true, your principal complaint is with respect to the Santiam Branch, I take it?

A. I imagine, if that is true, that's what it is.

Q. And if the rates from the Santiam were put on the same basis as rates from other SP&S points and Oregon Electric points, you would be taken care of?

A. We would, as far as those points are concerned, I imagine.

[fol. 423] Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. Now, with regard to diversion, Mr. Rockwood was asking some other questions on diversion rights out of here, that is, you could get into these points, but it has been testified that on traffic which the Milwaukee receives—

Mr. Rockwood: Just a moment—

Mr. Maguire: Just a moment. I am going to make an introductory explanation.

Mr. Rockwood: Mr. Examiner, I object to Mr. Maguire's proceeding as he was about to do under the guise of questions and giving this witness some instructions on rate matters, to be followed by what I am sure will be a leading question.

Mr. Maguire: Why don't you wait until I state it?

Mr. Rockwood: This witness is here telling what his difficulties are and not what his difficulties might be or what he would like to have under various premises put up by Mr. Maguire. I object to Mr. Maguire's stating to this witness what the testimony of some other witness was.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: We will be on the record.

Mr. Maguire: What I am attempting to do, Mr. Examiner, is counsel has asked some questions which are erroneous statements of fact as to rate applications, and

[fol. 424] I think that the witness is entitled to know what the testimony has been. He said he is not a rate expert. I am going to ask, if this situation exists, would a change in the situation be beneficial to him.

Exam. Dishman: You don't have to review the previous testimony.

Mr. Maguire: Just one point of it. I will say this, then, let's put it this way, assuming—

Mr. Rockwood: My objection has not—

Mr. Maguire: If you stop interrupting me, I will go ahead.

Mr. Rockwood: May I make a statement for the record?

Exam. Dishman: All right.

Mr. Rockwood: I object to the procedure Mr. Maguire is following, of instructing the witness and then asking for an opinion from him as to how that would affect his business.

Mr. Maguire: And you have done exactly the same thing, while it's true you have gone further than that. You have made an assumption and asked questions based upon that assumption, not based on any evidence whatever in this record, and I doubt that it will ever be.

Mr. Rockwood: Mine is cross examination.

Mr. Maguire: You have indulged in assumptions and erroneous assumptions.

Exam. Dishman: You say you are sales manager. What do you have to do with traffic matters?

The Witness: Well, in an organization the size of ours, [fol. 425] there is no one particularly handling the traffic, and I sell the lumber and with the help of the other people, and we figure out our own routings. We have a routing guide there.

Exam. Dishman: You say you are not a rate expert?

The Witness: That's right.

Exam. Dishman: But you are testifying as to the difficulties that you have of reaching certain points and certain areas?

The Witness: Yes.

Exam. Dishman: You do know that, of your own knowledge?

The Witness: That's right.

Exam. Dishman: Could you ask him a direct question?

Mr. Maguire: Yes, I am going to ask a direct question. I was interrupted by counsel.

Exam. Dishman: All right, proceed.

By Mr. Maguire:

Q. If it should be a fact that a shipment routed from the SP&S Spokane, thence via the Milwaukee and, that is, other than the Santiam Branch, and destined to points east of Mobridge on the Milwaukee, if the fact should be that you cannot divert any such car off the Milwaukee, if it should be refused or otherwise undisposed of, would the establishment of joint through rates which would permit the extension of diversion which is now enjoyed by other routes which can be reached through Minnesota Transfer without penalty, would the establishment of that privilege be a benefit to your business?

A. You mean, if we shipped a car to one of these points [fol. 426] and it was refused and we had to ship it on?

Q. And if, under the present rates, you cannot divert off the Milwaukee, would it be a benefit to you to have diversion through the Milwaukee connections?

A. Of course, it would.

Mr. Maguire: That's all.

Recross examination.

By Mr. Rockwood:

Q. Insofar as you now have rates to points on the Milwaukee in Iowa, Missouri, Minnesota, Wisconsin, and Illinois over which you can divert in transit if you fail to make a sale, as to that territory, there would be no increased advantage in being able to roll the car over the Milwaukee, would there, all the way from Spokane?

A. Well, as far as I am concerned, I would like to be able to roll it over any railroad that hooks up with another railroad all over the United States.

Q. And that's the basis of your testimony?
A. That's right.

Mr. Rockwood: That's all.

By Mr. Golden:

Q. If you had the joint through rates from the Santiam Branch to these points that you mentioned, Seeland, North Dakota and Wagner, South Dakota, if you made a shipment over that route and it was refused at those points, could you reconsign that car to any other point on the Milwaukee, to any other point east of there on the Milwaukee?

[fol. 427] Exam. Dishman: You mean, without additional charge?

Mr. Golden: Without any additional charge.

The Witness: In the same rate territory. I am speaking of a car which actually arrived and a fellow unloaded a car, naturally, it's dead there, but if he refused it when he got the invoice and the car is still on wheels and directed to a destination, I would like to say, let it go forward.

By Mr. Golden:

Q. From these two points, do you have a diversion privilege?
A. What two points?
Q. Seeland and Wagner.
A. I doubt it very much, if they actually arrived there.

Mr. Golden: That's all.
Exam. Dishman: Is that all of this witness?
Mr. Torinus: I have one question on that last point.

By Mr. Torinus:

Q. Those two cars to those points are the only ones that you recall that you have had trouble with in 1953, is that right?
A. There was actually eight to Seeland and six to the other point.
Q. But the cars to those two points were the only ones you had trouble with?

A. I think there was trouble with others. I don't recall if there was. In fact, I got disgusted with it. I decided we couldn't buy lumber off the SP&S and ship it.

Q. Those are the only destinations that come to your mind?

[fol. 428] A. That's right.

Q. And those were shipments off the Santiam Branch in all cases, is that right?

A. Yes, that's where we had the block of stock bought.

Mr. Torinus: I have no further questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will be off the record.

(Discussion off the record.)

Exam. Dishman: We will recess for lunch now and resume at 1:30.

(Whereupon, at 12:03 p. m. a recess was taken until 1:30 p. m. of the same day.)

[fol. 429] AFTERNOON SESSION 1:30 p. m.

Exam. Dishman: The hearing will come to order, please. Let the record show that Mr. Carr is being recalled for cross examination.

Mr. Torinus: Mr. Examiner, before cross examining Mr. Carr, I would like to make a motion with respect to the first complete paragraph on page 4 of his prepared statement. That is the paragraph in which it is stated in the first sentence that the Sioux Steel Company is handicapped and prejudiced in the sale of grain bins in the Northwest, and in the second sentence, that one of their principal competitors, the Butler Manufacturing Company, is located in the Twin Cities.

The following sentence is "While they cannot ship from the Twin Cities—", that is, while Butler Brothers cannot ship, "—via the Milwaukee Railroad to points on the lines

of the defendant carriers, they can ship to those points via the Great Northern and the Northern Pacific—", etc.

Exam. Disliman: Your motion covers that entire paragraph, does it?

Mr. Torinus: That is correct. The basis of the motion is that we have already moved to strike from the complaint the words "and Section 3 (1)". This testimony, as I see it, raises, or attempts to raise the Section 3 (1) issue, and our motion to have the words "and Section 3 (1)" stricken from the complaint is now pending.

[fol. 430] The intervention of the Sioux Falls Traffic Bureau was on the condition that its intervention would not unduly broaden the issues in its petition. No issue was raised as to preference or prejudice under Section 3 (1), and it is our position that, as Mr. Rockwood argued the opening day of the hearing, since the carrier has no standing to raise an issue under Section 3 (1) in its complaint, since no Section 3 (1) issue is properly completed, and even if it were properly completed, a carrier could not raise it, since the intervention of the Sioux Falls Traffic Bureau has been allowed on the condition that its intervention would not unduly broaden the issues and since this paragraph attempts to raise an issue of preference and prejudice as between shippers, it has no place in this proceeding, and we therefore move it be stricken.

Exam. Dishman: Well, as I stated the other day when the question was raised, this evidence was coming in over the objection of the defendants and that there was a standing objection, and so I am going to overrule that motion and receive the evidence, and after the record is made, if there is any evidence in the record which you think does not belong there by virtue of the issue that you have discussed, you can file a motion to strike with the Commission, so proceed.

S. W. W. CARR having been previously sworn, was recalled and testified as follows:

[fol. 431] Cross examination.

By Mr. Torinus:

Q. Mr. Carr, I would like to ask you some questions first about these steel grain bins that are fabricated at Sioux Falls by the Sioux Steel Company. You stated in your prepared statement that in the first five months of this year, the Sioux Steel Company has shipped 18 carloads of bins to Idaho, Oregon and Washington.

Could you give me the specific destinations to which those bins have been shipped and the number of cars to each destination?

A. I think I have that. We had one car to Quincy—

Q. Quincy?

A. Washington.

Q. That's on the Great Northern, is it?

A. I believe so. We had three cars to Blackfoot, Idaho. I am not sure—we have four to Pocatello, Idaho.

Q. On the Union Pacific?

A. I think so. We had one to Madras that moved on the Union Pacific because we have no through rates to Madras on the Oregon Trunk.

Mr. Maguire: Pardon me, Madras, Oregon? M-a-d-r-a-s?

The Witness: Correct.

By Mr. Torinus:

Q. These are destinations on the Union Pacific which is on joint trackage with the Oregon Trunk, is that right?

A. I am not sure about that. I will take your word for it, but we have no routing to Madras.

[fol. 432] Q. You have only Milwaukee, Union Pacific out of Sioux Falls, is that right?

A. That's right, yes, sir. Then we had one to Dallas, Oregon—that's Southern Pacific, Caldwell, Idaho, one—

Q. Is Dallas on the Southern Pacific?

Mr. Rockwood: Yes.

The Witness: I think it's on the Southern Pacific.

By Mr. Torinus:

Q. What was the next?

A. The next one I had was Caldwell, Idaho. I don't know what that is on.

Q. I understand that's Union Pacific.

Mr. Maguire: I will agree it is, yes.

The Witness: One to Idaho Falls, Idaho and one to Yakima. That moved Union Pacific. We had one to Portland, Oregon via Walla Walla, that is, it had a stop in transit at Walla Walla, via the Union Pacific, and we had one to Burley, Idaho, one to Downey, Idaho and one to Spokane on the Milwaukee.

By Mr. Torinus:

Q. Now, those last two Idaho destinations, are they Union Pacific, do you know?

A. My record does not show.

Q. Your last car was to Spokane via the Milwaukee?

A. Yes.

Q. Now, Mr. Carr, do you know whether or not these 18 carload shipments were all transit cars?

A. They were all transit cars.

[fol. 433] Q. They moved from Sioux Falls to these destinations at the balance of the through rates?

A. That is correct.

Q. So then, I take it that your transit privilege at Sioux Falls applies in connection with the movement out of Sioux Falls, Milwaukee, Union Pacific?

A. That is, to points on the Milwaukee. I mean, on the Union Pacific it is.

Q. Is there any restriction insofar as junctions are concerned? How would they move out of Sioux Falls, Milwaukee, Council Bluffs, thence Union Pacific?

A. I think practically all of these did move that way, although some of them could have moved through Marengo.

Q. Now, do you know, Mr. Carr, whether or not the Sioux Steel Company distributes any of those bins in the local area around Sioux Falls by truck?

A. Yes, that is, to individual customers that come in, but it's rather limited.

Q. I see. Is that to quite a substantial area around Sioux Falls?

A. No, I don't think they are trucking out of Sioux Falls into the territory west except within a very close radius, maybe 50, 75, 100 miles, and some farmer will come in with livestock and haul his bin back.

Q. You don't know what proportion of their total out-[fol. 434] bound movement is trucked out of Sioux Falls?

A. A very small proportion, sir. I don't know.

Q. To the extent that there is any trucking out of Sioux Falls by the Sioux Steel Company, they would be building up excess transit credits, would they not?

A. That's correct.

Q. Now, do you know who the consignees were on these 18 carload shipments?

Mr. Rockwood: He just gave us 17.

The Witness: Yes.

By Mr. Torinus:

Q. I am not going to ask you to give their individual names. I am going to ask you whether you know if they are dealers or distributors or farmers or who they are in that general territory.

A. They are not farmers. It's large cooperative supply company to whom they went, most of them.

Q. Do you know then, Mr. Carr, how they are distributed in the local territory, say, a carload that went to, well, that carload that went to Spokane, Washington, the last car that you mentioned, could you tell me to whom that was consigned?

A. I will. That was to the Dix Steel Building Company.

Q. And do you know how those bins are distributed in the local territory?

A. No, sir, I do not.

Q. You don't know that the Peter Dix Company or the [fol. 435] Dix Building Company is the exclusive agent of the Sioux Steel Company in Spokane?

A. No, sir, I don't know that.

Q. Nor that they distribute grain bins by motor truck

in the territory west of Spokane served by the Great Northern, Northern Pacific and SP&S?

A. I don't know that.

Q. Of course, to the extent that shipments are distributed west out of Spokane by motor vehicle to various points along the lines of these carriers, the distribution points on the SP&S would be no different rate-wise from distribution points on the Great Northern or the Northern Pacific, isn't that right?

A. I don't know as I understand your question.

Q. Well, let me put it this way: To the extent that a shipment moved on transit billing out of Sioux Falls via the Milwaukee to Spokane, carload shipments, and there was distribution of that carload out of Spokane to distribution points along the Great Northern, Northern Pacific and the SP&S, the rate situation, rather, the rate applicable insofar as the railroad is concerned, would be the through rate from transit origin via Sioux Falls, thence Milwaukee to Spokane, and the distribution in that area, whether it went to a point on the Great Northern, Northern Pacific or Milwaukee or SP&S wouldn't affect the measure of the rate into Spokane, isn't that right?

A. It wouldn't affect the measure of the rate into Spo- [fol. 436] kane, but if we had through rates direct to those points, it might not be necessary to completely unload the car at Spokane. It might move on with transit privileges to those ultimate destinations, which it can't under the present rate adjustment.

Q. Of course, you are not seeking through rates in this proceeding, at least to points on the Great Northern and Northern Pacific west of Spokane?

A. No, sir.

Q. And isn't it true that the Great Northern, Northern Pacific serve a large grain producing area in Washington, a very substantial grain producing area compared with that served by the SP&S?

A. I am not familiar with the agricultural situation out here. I couldn't answer that.

Q. You don't know, I take it, either, whether distribution by truck out of Spokane is the usual method of distributing grain bins to that particular area?

A. I don't know anything about that. We only had one car to Spokane, if I remember correctly. Incidentally, our representative, the Sioux Steel Company, knowing that he does not have through rates to points on the Oregon Electric and the SP&S without limitations, I understand, does not work the area at all.

Q. Now, Mr. Carr, the Sioux Steel Company, as I understand it, would have—let's make it this way: Does have joint through rates from transit origins via Sioux Falls to destinations on the Union Pacific which are common [fol. 437] points with the Spokane, Portland and Seattle, and to destinations on the Southern Pacific which are common points with points on the Spokane, Portland and Seattle System Lines, is that right?

A. That's correct.

Q. For example, to Washtucna, Washington, there are through rates via Milwaukee, Union Pacific?

A. I am not acquainted with the point.

Q. And also to Kahlotus, Washington?

A. I am not acquainted with that. Do you want to take Madras, which is on the OT and UP? I am acquainted with that, and we do have rates on the UP.

Q. Also to Portland?

A. To Portland on the UP, yes, sir.

Q. To the extent that any of those points that are local to the SP&S System Lines are reached through the medium of truck distribution out of Portland or out of Madras or out of Spokane, you at least have joint through rates to the distribution point, is that right?

A. Yes. Our interest is only in the rate to the point where it is used locally or distributed out of there by some other means with the possible exception, as I pointed out before, if we want to unload and the transit privilege.

Q. Now, you also have, as I understand it, joint through rates to all points on the SP&S via the Great Northern out of Sioux Falls—and this is from the origins that you men- [fol. 438] tioned in your statement—if the tonnage moves inbound via the Illinois Central or via the Burlington to Sioux City thence Great Northern into Sioux Falls, isn't that right?

A. That is correct.

Q. Now, do you know whether or not the Sioux Steel Company buys any steel at Kansas City?

A. They have some this past year, but for many years they have been virtually limited in their supply to Warrenton, Virginia, most of it. Seems that back before the war and during the war, they had their source of supply, when materials were very limited, and they got started buying it there and it's continued, although they have bought some recently from Kansas City and Granite City.

Q. They are now buying steel, then, from Kansas City, as I understand it.

A. They have very recently, that is, this year, whether this month, I don't know. They have purchased, I think —oh, I don't know what it is. It's quite a large amount, anyhow.

Q. Are there not joint through rates on steel from Kansas City via Sioux Falls in connection with the route out of Kansas City, Missouri Pacific, thence Omaha, thence Northwestern into Sioux Falls, which would apply with transit and a movement out of Sioux Falls Northwestern, Edgely, thence—

A. If you will change it to Oaks, I will agree with you.

Q. Northwestern, Oaks, thence Northern Pacific, Spo-
[fol. 439] kane and thence SP&S?

A. I think that's correct.

Q. To the extent the Sioux Steel Company purchased steel at Kansas City, he would be able to avail himself of transit in connection with the movement of grain bins to a point, a local point on the SP&S via Northwestern, Oaks, Northern Pacific, Spokane, thence SP&S?

A. If he had any of that tonnage on hand, he could do that.

Q. Does that same situation exist with respect to a shipment which was routed out of Kansas City, Missouri Pacific, Omaha, thence Milwaukee into Sioux Falls with transit at Sioux Falls, thence Milwaukee, Edgely, Northern Pacific—

Mr. Maguire: Would you read that question?

(Question read.)

The Witness: I couldn't answer that yes or no. When you start in to the various ramifications of these routing

tariffs complicated by the ramifications of the fabrication tariffs, without having it before me, I wouldn't dare answer.

By Mr. Torinus:

Q. You are sure about the route in connection with the Northern Pacific where the inbound movement is in connection with the Northwestern thence out?

A. From Kansas City, yes. I recall having checked that.

Q. Now, do you know whether there are any joint through rates on steel from Kansas City to points on the SP&S that apply Missouri Pacific, Omaha, Milwaukee via Sioux Falls, [fol. 440] Edgely, thence Northern Pacific to points on the SP&S?

A. That's the same question you asked a bit ago. I don't remember that.

Q. I asked you if there were joint through rates with transit and you said you didn't know. Now, I am asking you just whether there were just joint through rates and not complicating the question with the transit.

A. I wouldn't have occasion to check that except with transit. In other words, I am not interested in the rates from Kansas City to Portland, Oregon unless it includes transit at Sioux Falls.

Q. The granting of transit at Sioux Falls in connection with the movement that moves in and out over the Milwaukee would be under the control of the Milwaukee Railroad, is that right?

A. I would presume so.

Q. Now, do you know, Mr. Carr, what transit was used in connection with this shipment that moved out of Sioux Falls and terminated at Quincy, Washington on the Great Northern?

A. No, sir, I don't have any of that transit information with me.

Q. Well, isn't it true that under the tariffs, it would have to be a movement into Sioux Falls either Illinois Central or Burlington, Sioux City thence Great Northern and Sioux Falls?

A. That's correct.

Q. So that your fabricator at Sioux Falls was able to avail himself of that inbound Illinois Central and Burling-

[fol. 441] ton tonnage to the extent, at least, of a carload shipment to Quincy, Washington?

A. That's correct.

Q. And that same transit tonnage would be available if he desired to make a shipment to a local point on the SP&S, isn't that right, moving out of Sioux Falls via the Great Northern?

A. I think so, yes.

Q. Do you know when that shipment moved, Mr. Carr?

A. Which one was that, sir?

Q. The one to Quincy I was talking about.

A. Moved out of Sioux Falls on January 7, 1954.

Q. Do you happen to have the car number and waybill?

A. Don't have the waybill number. The car number was —I think it's wrong—reads BLE 91092. I think it should be PLE, but my record reads BLE.

Mr. Rockwood: Bessemer and Lake Erie.

The Witness: Then I stand corrected.

By Mr. Torinus:

Q. Now, you mentioned that shippers of grain bins out of the Twin Cities likewise may not route shipments to points on the SP&S via the Milwaukee from the Twin Cities to Spokane.

A. I think that's correct.

Q. And you mentioned a moment ago something about a part unloading privilege. They wouldn't have that privilege with respect to any shipments that happened to terminate on the SP&S, they wouldn't have that privilege to stop to [fol. 442] part unload at Milwaukee points, isn't that correct?

A. That's correct.

Q. Your principal complaint, as I take it, or, rather, let's put it this way, the Sioux Steel Company's principal complaint with respect to the Illinois Central and Burlington, Great Northern routes into Sioux Falls is that the fabrication and transit privilege is not generally available, as you put it on page 3 of your statement, on shipments moving out via other carriers into South Dakota, North Dakota, Minnesota and western trunk line territory?

A. That's correct.

Q. It isn't with respect to the availability of transit in connection with shipments to points in the Pacific Northwest?

A. No, that's available in the Northwest if they have the tonnage, but if they have those cars come in and don't have enough orders to sell them, they lose their valuable transit privilege, and that is important.

Q. Now, if the Milwaukee permitted transit on shipments moving inbound to Sioux Falls over the Illinois Central and moving into Sioux City over the Burlington thence Great Northern and moving out over the Milwaukee, that would take care of shipments to this Dakota, Minnesota and western trunk line territory, isn't that correct?

A. I don't think you said what you meant.

Q. Well, all right, you tell me what I mean.

[fol. 443] A. The Milwaukee does grant that transit now to any points where they have through rates.

Q. In connection with an inbound movement over the Illinois Central or the Great Northern into Sioux Falls?

A. If the routing is available.

Q. Well, is the routing available?

A. Well, there again, the routing tariff has some three or four hundred pages and the transit tariffs have a good many, and I wouldn't know.

Q. You wouldn't know whether it is permitted without examination of the tariff?

A. The Milwaukee tariff, generally speaking, will grant transit on anything originating east of the Mississippi River moving out through Sioux Falls. Then we have to go to the routing tariff and we get there and if there are no routes, we are stuck.

Q. You don't know whether there are any routes on shipments originating east of the Mississippi River into Sioux Falls thence Milwaukee out of Sioux Falls that would permit this transit?

Mr. Maguire: To where? Let's get a fair question.

By Mr. Torinus:

Q. To destinations in the Dakotas, Minnesota and western trunk lines territory.

A. No, sir, into the western trunk line territory from points east of Chicago, the routing tariff provides that—that's true of all the railroads—that they must get the tonnage east of the Mississippi River.

[fol. 444] Q. So then there are no through routes with transit in Sioux Falls to destinations in the Dakotas, Minnesota and western trunk line territory where the shipment moves out of Sioux Falls on the Milwaukee?

A. And came in on the Illinois Central or Great Northern?

Q. That's right.

A. That is correct.

Q. If the Milwaukee should permit that routing in transit, that would relieve the situation we have just been talking about, isn't that right?

A. Well, I presume if the Central territory railroads and the western trunk lines railroads would eliminate all of their routing restrictions, that would be true, but I am not optimistic enough to think they will.

Q. Now, Mr. Carr, I would like to ask a question or two with respect to this discussion concerning hogs. Where are the markets—let's put it this way: Where is the principal market for the purchase of hogs in the Pacific Northwest?

A. Well, Portland got the more cars than Seattle, so I would say Portland is, as far as we are concerned.

Q. Portland is the principal market as far as you are concerned for the purchase of hogs. What are the other important markets?

A. Well, there is Spokane, Tacoma, and we have had a very few to Salem and Cornelius.

Q. Does that take care of all your movements—

[fol. 445] A. All of our movements during 1953.

Q. Out of Sioux Falls. Now, you have, of course, single factor rates from Sioux Falls to Spokane via the Milwaukee, correct?

A. Correct.

Q. Also from Sioux Falls to Portland via the Milwaukee, Union Pacific?

A. That may be. I don't know. We haven't had any movement that way. Of course, when you start taking into consideration there, you have got to consider the connections that might be made and we haven't had any movement that way. I don't know whether any rates are available or not.

Q. You don't know whether there are joint through rates on livestock from Sioux Falls to Portland via Milwaukee, Marengo, thence Union Pacific?

A. I haven't had occasion to check it. If you say there is, I will accept it.

Q. How about Salem?

A. I don't know, sir.

Q. You don't know whether there are joint through rates out of Sioux Falls Milwaukee, Marengo thence Union Pacific Portland thence Southern Pacific Salem?

A. No, sir, I don't remember that.

Q And then, I take it, you don't know whether there are joint through rates from Sioux Falls to Cornelius?

A. That would be the same answer. Those shipments [fol. 446] moved out of Sioux Falls on the Great Northern.

Q. You don't know whether they could have moved on a joint through rate via Milwaukee, Marengo, Union Pacific, Portland, thence Southern Pacific to Cornelius?

A. No, sir, I do not.

Q. Well, you do know, Mr. Carr, that Portland is a point which is common between the SP&S and the Union Pacific and that Salem and Cornelius are points common between the Oregon Electric and the Southern Pacific, is that right?

A. That's correct, I think.

Q. Do you know of any market for the purchase of hogs at any local point on the SP&S or Oregon Electric or the Oregon Trunk?

A. No, sir, other than to the points I have shown that we had movements.

Q. Those are not local points, I think you said.

A. Salem and Cornelius.

Q. They are common points with the Southern Pacific?

A. I think you are correct. They are common points.

Mr. Torinus: I have no further questions.
Exam. Dishman: Any more cross examination?
Mr. Rockwood: Nothing.
Mr. Maguire: I have a few questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Carr, if it develops by testimony in this case that there are no rates via the Union Pacific, Marengo to Port-[fol. 447] land, that is, rates on hogs, via Marengo, Union Pacific and Southern Pacific, then will the proposed rates Milwaukee, Spokane, SP&S to Willamette Valley points, such as Cornelius and Salem and Portland, be of benefit to the people whom you represent?

A. Oh, definitely.

Q. Now, then, Mr. Torinus was asking you some questions about this trucking to individual customers from various western destinations, and he asked you the question whether or not, whether it would not be, as far as the SP&S is concerned, if a shipment is trucked, let's say, from Spokane, of these grain bins, from Spokane to a local point on the SP&S, that the SP&S customer would have the equivalent of joint through rates—I believe that was the general tenor of the question. Do you recall that?

A. Yes.

Mr. Torinus: That was not the general tenor of my question.

By Mr. Maguire:

Q. Well, you recall the question?

A. Yes, I recall the question.

Q. If any quotation is incorrect, you remember the quotation, I think, in substance. Now, these people who are on the SP&S at local points, is there any other way they can, under the present rate set-ups get their grain bins, other than by truck from the distributing point, if there are no through rates available to them?

Mr. Torinus: What people?

[fol. 448] Mr. Maguire: The people on the SP&S.

Mr. Torinus: You mean farmers that receive in carloads?

Mr. Maguire: I am talking about the customers who receive these grain bins in whole or part carloads.

Mr. Torinus: I will object to the question because he hasn't said any people on the SP&S,—

Mr. Maguire: I know he hasn't, but you were—

Mr. Torinus: —who were receiving in whole or part carloads or interested in receiving that.

Mr. Maguire: You were talking about the ultimate receivers of whole or part carloads on the SP&S. Those are the same people I am talking about, the ones I am talking about.

Mr. Torinus: I object to the question on the grounds the witness has shown no knowledge of where any shipments might be distributed on the SP&S.

Exam. Dishman: What was your answer to Mr. Torinus' question, Mr. Carr?

The Witness: My answer in that case was that insofar as the rate to Spokane was concerned, it didn't make any difference where it went west of Spokane, and I don't know whether the distribution is by truck or by rail or what it is after it leaves Spokane. In fact, some of it might be used locally in Spokane for all I know.

Mr. Maguire: Mr. Examiner, Mr. Torinus was asking about a hypothetical question about receivers of these grain [fol. 449] bins, ultimate consumers, who had trucked out of Spokane, consumers located on the SP&S and the question asked was whether, so far as they are concerned, the question of joint rates was academic because they got their bins trucked to them in any event. I am following out and asking about the same hypothetical customers. Now, Mr. Torinus objects and says he does not know of any. I am talking about the same hypothetical and maybe even fictitious customers Mr. Torinus talked about.

Mr. Torinus: Not conceding, Mr. Maguire, that you correctly stated my question, my objection is this: The witness has disclaimed any knowledge of the manner of distributing grain bins. If there is any distribution of grain bins to points on the SP&S, he has disclaimed any knowledge of where those grain bins might be distributed, in what quan-

tities they might be distributed, and I object to this question on the grounds that the witness has already disclaimed any knowledge of that situation.

Mr. Maguire: Mr. Examiner, might I address a question to counsel which, I think, will clarify it? Mr. Torinus, while it is true he disclaimed any actual knowledge, do you deny now that you asked him about hypothetical customers on the SP&S?

Mr. Torinus: I might ask a lot of hypothetical questions on cross examination, which doesn't lay a foundation which will permit you to ask on redirect questions about a situation of which the witness disclaimed knowledge.

Mr. Maguire: You don't deny you asked the question that [fol. 450] I just asked about?

Mr. Torinus: I do deny I asked my questions in the form you stated.

Mr. Maguire: Well, in view of that denial, which is contrary to my own very distinct recollection, I would ask the privilege of asking that question of the witness to answer this same hypothetical situation that Mr. Torinus put up, and if Mr. Torinus did not put up such a hypothetical situation, then my question on redirect may be ignored.

Exam. Dishman: Let the witness answer if he has any knowledge of the situation or any views on the hypothesis.

The Witness: Could we go back now and read that question? There's been so much intervening argument—

By Mr. Maguire:

Q. I will be glad to restate that, with the understanding the same objection and argument would follow the re-asking. Mr. Torinus, as I recall, asked you a question as to whether or not a person located on the SP&S, at local point on the SP&S, who had his grain bins delivered to him by truck, if there are such people, out of Spokane, would have what would amount practically to through rates via the SP&S from Sioux City to his particular point—I meant Sioux Falls. Now, then, if there are no through rates, is there any other way of that customer's getting those grain bins other than by trucking from a common rate point?

Mr. Torinus: I would like to state my objection.

[fol. 451] Mr. Maguire: You already stated it.

Mr. Torinus: I am going to state it again.

Mr. Maguire: Let the witness answer the question while it is fresh in his mind and counsel can move to strike it.

Exam. Dishman: All right. All right, go ahead.

The Witness: Well, of course, I don't know that the shipment would move from Spokane by truck. It might move by rail. In either event, it would have to move on a combination rate over Spokane, whereas if they had joint through rates to points on the SP&S, that car might have moved through with unloading and transit privileges to those destinations at a much lower through rate than would exist under the combination cost.

By Mr. Maguire:

Q. Of either combination rail or combination rail and truck costs?

A. That is correct.

Mr. Maguire: I see. Now, do you wish to strike?

Mr. Torinus: I move to strike on the grounds the witness has disclaimed any knowledge of whether there were any individuals in that situation.

Exam. Dishman: Well, the answer will be allowed to stand.

Mr. Maguire: I have no further questions, thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Merrill: Mr. Shaw, please.

James L. Shaw was sworn and testified as follows:

[fol. 452] Direct examination.

By Mr. Merrill:

Q. Will you state your name, please?

A. James L. Shaw.

Q. What is your address?

A. 2419, office address, 2419 N. E. Sandy Boulevard.

Q. Portland, Oregon?

A. Portland, Oregon.

Q. What business are you engaged in?

A. Wholesale fuel.

Q. What is the name of your business?

A. Commercial Coal Sales Company.

Q. Are you the sole owner?

A. Yes, sir, assumed name.

Q. How long have you been engaged in that business?

A. Since 1919.

Q. In what territory do you operate or cover in your operation?

A. Generally, the States of Oregon and Washington.

Q. Oregon and Washington constitute your sales territory?

A. Sales territory.

Q. And are you the only wholesaler of coal located in Portland?

A. I believe I am at the present time.

Q. What is the volume of the coal which you have marketed in the States of Washington and Oregon?

A. Over what period? It's varied an awful lot.

[fol. 453] Q. Take it over the last ten years.

A. Ten years? Probably during the war it run up to, oh, around 100,000, 80 to 100,000 tons a month or more, a year, I mean. I would say the last year about 20,000 ton.

Q. Have you made sales of coal to any points served by the SP&S System?

A. Yes, sir.

Q. Would you name some of those points?

A. We ship to Astoria and have shipped, did ship to Seaside and Eugene, Albany, Salem, which are on the Oregon Electric and where the rate did use to be competitive.

Mr. Rockwood: What were the Oregon Electric points, Eugene, Albany and Salem?

The Witness: Eugene, Albany and Salem.

By Mr. Merrill:

Q. What is your principal market in the State of Oregon for coal?

A. Portland.

Q. Where do you obtain your coal at the present time for sale in Oregon?

A. Mostly from Utah.

Q. From what group in Utah?

A. Castle Gate Group, known as the Castle Gate Group in the tariff.

Exam. Dishman: What type of coal?

The Witness: Bituminous.

[fol. 454] By Mr. Merrill:

Q. Exclusive of the surcharge under Ex Parte 175, what rates have you on coal from the Castle Gate Group in Utah to Portland?

A. Without the last increase, slack was 580 and nut, 605, and lump, 625.

Q. Have you ever purchased coal from Wyoming?

A. Yes, sir.

Q. What group?

A. Southern Wyoming, Rock Springs and Hanna Group.

Q. What are the rates on coal from those groups to Portland, exclusive of Ex Parte 175 increase?

A. Well, the Rock Springs group is 30 cents below the Utah—does that give enough? And Hanna group is—

Mr. Rockwood: Wait a minute.

The Witness: —60 cents per ton, I believe, over the Rock Springs group to Portland.

Mr. Rockwood: The Hanna Group?

The Witness: H-a-n-n-a.

Mr. Rockwood: Hanna 60 cents over what?

The Witness: Rock Springs.

By Mr. Merrill:

Q. What are the rates from Roundup, Montana to Portland exclusive of Ex Parte 175 increases?

A. I have them on this statement the other day, 725 on all sizes. I presume that's correct.

Q. That information you obtained from the testimony of Mr. S. H. Clarke who appeared here last Friday?

[fol. 455] A. Yes, sir.

Q. You were present at the time he testified, were you not?

A. Yes, sir.

Q. Are you interested in developing a market in Oregon for coal from the Roundup mine at all?

A. Well, I would be interested in developing a market for coal from any location, as far as that goes. We are in that business.

Q. In the way the rates are now set-up from Roundup, Montana to Oregon, would there be any possibility of developing such a market, in your opinion?

A. I can't see where there would be any chance at all, except during an emergency such as war or something like that. We could have used quite a bit of it and did use some during the last war.

Exam. Dishman: Was that a different type of coal?

The Witness: Similar to Rock Springs, Wyoming, as far as I know.

Exam. Dishman: But farther distant, is that right?

The Witness: I don't know. It's farther distant as far as the rates go, according to this rate. I don't know if the mileage is given in here.

By Mr. Merrill:

Q. At the present time do you find that the rates from Roundup, Montana are prohibitive for developing a market for coal from them in the State of Oregon?

A. Yes, on that differential, I would say they were not very competitive, that differential on the two rates he gave, [fol. 456] 725 and, well, 585 for Rock Springs lump.

Q. What is the condition of the present market for coal in the Portland area and other points in Oregon?

A. It's very slim. On account of oil and gas, other competition, the domestic market has decreased enormously in the last ten years, the last four or five years especially.

Q. In other words, the supply of coal at the present time is quite ample? You have no difficulty bringing it in to meet the demand in Oregon territory?

A. Not that bit.

Q. That would include any point along the SP&S System, is that correct?

A. That's correct.

Q. Would you be interested, however, in attempting to develop a market for the Roundup coal even at the present time?

A. I think it's interesting to have competitive rates. While I don't see any immediate future for very much additional coal, I have always thought you can't create a market, you can't work a market without a rate, without a competitive rate. That would be my position in anything like that.

Q. You feel the rate would be a prerequisite to any attempt to develop such a market?

A. Absolutely, in the wholesale coal market, no use of—

Q. Regardless of the present situation, should the conditions change and the demand for coal increase, such as [fol. 457] the outbreak of hostilities or renewal of the present Korean conflict, would that lend encouragement to you, or perhaps present more favorable conditions for developing a market along SP&S System points?

A. Well, I would say generally, that would increase the market for all coals in this district and from that standpoint, it would be, I would think, a good thing to have the rates available if and when any such emergency did occur.

As I said before, we could have used a lot of it during the last war when there was a severe shortage from all districts. We would have probably got some from that field anyway.

Mr. Merrill: That's all, sir.

Cross examination.

By Mr. Rockwood:

Q. Over what route does the 725 rate apply from Roundup to Portland?

A. I don't know. That was given in Clarke's testimony. That's where I got it from.

Q. You don't know anything about it, via Union Pacific or what?

A. I understand it originates on the Milwaukee at Roundup.

Q. And then moves into Portland over the Union Pacific?

A. I don't know what the routing would be from there.

Q. What is it that keeps the Utah coal out of here, in addition to general market conditions in competition with Roundup—excuse me, I mis-spoke. Aside from the general decline in the coal market and aside from railroad freight rates, what difficulty does the Roundup producer have in competing with Utah?

[fol. 458] A. Well, I would say, generally speaking, the same as Southern Wyoming because it's a little higher moisture coal.

Q. The Utah coal is superior to Roundup coal, isn't it?

A. I think so, for most purposes, because it stores better.

Q. During the war, there was a market here for coal that was used to a large extent in public housing, was it not?

A. Yes, sir.

Q. That market evaporated immediately with the cessation of ship building operations at the close of the war, is that correct?

A. I think you are.

Q. Unfortunately, for coal dealers?

A. Yes.

Q. And there has been nothing of that nature to take its place since then, has there?

A. Not that I know of.

Q. And domestically, the trend in the entire State of Oregon and State of Washington has been away from coal for domestic use and to oil and gas for domestic heating?

A. That's correct, as far as I know.

Q. And the trend has been the petroleum fuels, oil or gas for commercial installations as well, has it not?

A. Decidedly, I would say.

Q. So, quite aside from the freight rate situation, your coal market in the Pacific Northwest is in a sad state of affairs?

A. That's true, but the way the trend is in the last [fol. 459] year or two, I could qualify that by saying that the price of oil is getting up where coal can compete with it.

Q. Which would mean reconversion of the heating plants?

A. It would.

Q. Do you anticipate that persons are going to convert from an automatic fuel to a fuel that has to be shovelled and the ashes carried out in this neck of the woods?

A. Not all of them.

Q. Do you think there will be any substantial number?

A. There are some now, appreciably.

Exam. Dishman: Who have converted it back?

The Witness: That have changed back on account of the increased cost of oil, for stoker use.

By Mr. Rockwood:

Q. Is that in domestic use?

A. Very limited.

Q. What is the, if you know, what is the total movement into the City of Portland of coal from all sources in the year '53?

A. No, I don't.

Q. Do you know how that compares with '52 or '51?

A. How it compares?

Q. How it compares with '52 and '51?

A. No, I don't know. My guess would be probably 10,000 tons less in '53 than '52, something like that.

Q. And '52, in turn, was less than '51?

A. I am sure it was. I don't have the figures.

[fol. 460] Q. Ever since the war there has been this downward trend in coal consumption?

A. That's right. I know it as well as anybody.

Q. You say you are interested in developing a market from any source. You would like to see the whole town converted back to domestic use of coal, I take it?

A. Well, it would probably help.

Q. Do you think that is going to happen?

A. No, sir, not for awhile.

Q. Not during our lifetime, probably?

A. I'm afraid not. It could, though, I mean, it could change.

Exam. Dishman: Do you have natural gas?
The Witness: That's what I have here.
Exam. Dishman: I say, do you have it now?
The Witness: Not now.

By Mr. Rockwood:

Q. You have read of the proposal to bring natural gas in here, but it has not materialized yet?
A. Not yet.
Q. If that natural gas comes in, that will be another competitor for your coal?
A. I suppose it will. It will be principally competitive for oil, I believe.
Q. As a matter of fact, the gas presently consumed in Oregon and Portland, particularly, is a product of petroleum oil and not of coal, that's right, isn't it?
[fol. 461] A. That's right.
Q. And that petroleum oil, for the most part, comes from California?
A. As far as I know, yes.

Mr. Rockwood: I have nothing further.

By Mr. Golden:

Q. Are you a sales agent for the Sheridan, Wyoming Coal Company?
A. No, sir.
Q. Do you have any difficulty getting all of the coal that you can sell at the present time?

Mr. Merrill: Objected to as having been asked and answered on direct examination.
Exam. Dishman: What was that?
Mr. Merrill: The question has been asked and answered on direct examination. He testified he had no difficulty.
Exam. Dishman: Is that your answer?
The Witness: That's right.
Mr. Golden: I have no further questions.

Redirect examination.

By Mr. Merrill:

Q. Mr. Shaw, is not the cost of the fuel to the consumer one of the principal factors which determines whether he will continue with coal or convert to oil and gas for industrial use?

A. I think it is, very decidedly, so far as industrial use is concerned.

[fol. 462] Mr. Merrill: That's all, sir.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Mr. Sackett.

H. S. Sackett was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Would you state your full name and your residence, please, Mr. Sackett?

A. H. S. Sackett, 712 S. W. Salmon, Portland.

Q. In what business are you engaged?

A. Lumber business.

Q. And do you carry on that business through a corporation or firm?

A. Partnership.

Q. And what is the name of the partnership?

A. Wood Products Company.

Q. Are you one of the partners in that business?

A. Yes.

Q. And which phase of the lumber business do you engage in?

A. Well, we are both manufacturers and wholesalers.

Q. And where is your mill or mills?

A. We have one small mill in Olympia and another in Tillamook.

Q. Olympia, Washington and Tillamook—

A. Oregon.

[fol. 463] Q. Just for the record, here. So far as your wholesaling activity is concerned, in what part of the country do you market lumber that you wholesale?

A. East of the Rocky Mountains.

Q. The entire United States east of the Rockies?

A. Yes.

Q. And in what areas in the Pacific Northwest do you secure the lumber, aside from that which you get from your own mills?

A. Mostly over the State of Oregon.

Q. Do you do business or do you buy lumber from mills located on either the SP&S, Oregon Electric or Oregon Trunk Railways?

A. Yes, sir.

Q. And at what points do you buy lumber on those railways?

A. Well, we buy some at Bingen.

Q. Bingen, Washington?

A. Yes.

Q. Is that a local point on the SP&S served only by the SP&S?

A. Yes.

Q. Can you name some others, either point or districts?

A. Well, we buy on the line between Albany and Lebanon and between Lebanon and Sweet Home.

Q. Is that what is known as the Santiam Branch?

A. I believe it is.

Q. Of the Oregon Electric. Do you buy also in the Willamette Valley?

[fol. 464] A. Yes.

Q. Can you just name the general district in which you do puchase?

A. We buy considerable around Grants Pass territory, Roseburg, Eugene.

Q. Now, you are familiar, I believe, generally familiar with the issues involved in this case, what the Milwaukee is trying to obtain here through Order of the Commission in the matter, so far as it applies to lumber rates?

A. Yes, I believe so.

Q. And I will ask you whether or not you believe that joint through rates between the SP&S and its two sub-

sidiaries through Spokane, Washington with the Milwaukee Railroad and its connections, with the same lack of restrictions as to diversions and other transit privileges as now obtained via the route of the Northern Pacific and the Great Northern out of Spokane, would be desirable from the point of view of your business?

A. It would.

Q. And would you briefly state some of the reasons that occur to you for that?

A. Well, we are in the wholesale lumber business, primarily, and anything we can do to enlarge the number of mills from whom we can buy and expand our marketing territory is desirable.

Q. Have you been able—strike that, please. Now, I wish you would explain just a little bit about the feasi- [fol. 465] bility of buying any selection of grades, dimensions and so forth, of fir lumber from any particular point, whether you have to shop around—what I am getting at is whether you have to shop around among mills to get the varieties, not the varieties, but the specifications and the qualities you want, or whether you can get them in any old mill you happen to go into?

A. No, you have to shop around, particularly nowadays.

Q. About what percentage of your wholesaling business consists of so-called firm sales, that is, where you have a definite customer to whom you are shipping, and how much consists of so-called transit cars which you start moving before you sell them?

A. About 60 per cent and 40.

Q. Sixty per cent firm sales?

A. Yes.

Q. Now, so far as the territory to the south and west, that is, in southwestern Minnesota and in western Minnesota on the Milwaukee west of Minnesota Transfer and in the Dakotas, do you have any difficulties in getting lumber which you purchase at various points on the Oregon Electric into that territory, having in mind the availability or non-availability of transit in case a shipment is declined? What is your feeling about that?

A. Well, we wouldn't want to engage in that kind of business, shipping to points on the Milwaukee, certain

points there, because if the customer refused our business, we would be stuck with it.

Q. And is it feasible?

[fol. 466] A. We don't have any diversion privilege.

Q. Will you state whether or not the limitation of your diversion privileges on the Milwaukee Railroad and not on its connections is an advantage or disadvantage to you?

A. Well, it would enable us to broaden our market quite a bit, I think.

Q. I think you misunderstood, whether the restriction of that to the Milwaukee is and not to connections, is an advantage or disadvantage?

A. Disadvantage.

Q. On the average, about how many cars per month or per year do you ship in your wholesaling operation?

A. One hundred to 150.

Mr. Rockwood: That's a month?

The Witness: Yes.

By Mr. Maguire:

Q. Can you ship from Oregon Electric points via Oregon Electric, SP&S then Great Northern or Northern Pacific to Minnesota Transfer and then move back into the Dakotas via the Milwaukee, a point in the Dakotas?

A. No.

Q. Now, what is your view, as an operating lumber wholesaler, as to the desirability of having access to all centers of consumption or sale?

A. I would like it.

Q. Are you able safely to get into the Williston Basin [fol. 467] country and to the Dakotas safely or without penalty, depending upon whether you picked a safe route or not?

A. As far as the Williston Basin—

Q. Over, starting at Baker, Montana and running east.

A. I thought it was around Williston, not in the southern part there.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. You produce lumber at the mill that you own at Olympia, Washington and the mill you own at Tillamook, Oregon. The Olympia mill is located in a town served by the Northern Pacific and Union Pacific?

A. Correct.

Q. Are you on one or the other of those roads?

A. Both.

Q. The Tillamook mill on the Oregon coast is served by the Tillamook branch of the Southern Pacific?

A. That's right.

Q. Do you have a wide open set of rates from your Tillamook mill to all points over the United States without restriction of routing?

A. I think it's pretty good.

Q. Pretty good, but is it unlimited?

A. I don't know.

Q. If there are any limitations on it, you would like to [fol. 468] have them all removed?

A. Yes.

Q. You want, I take it, Mr. Sackett, to have everything wide open for all mills everywhere in the Pacific Northwest over all track connections all over the United States?

A. I think the public should get the benefit of everything.

Q. And it's on the basis of that point of view you are making your remarks about what the Milwaukee has asked for in this case, whether it will be good or bad for the lumber dealers?

A. Specifically, I can see where it would help us. We would like to get interested in that eastern Montana and Dakota territory now that the oil business is going so good.

Q. When you talk about eastern Montana, what point do you designate as the western limit of eastern Montana in the remarks which you just made?

A. Well, I was referring particularly to the eastern counties over there where the oil fields are.

Q. All the way from Forsyth, Montana to Terry, Montana, the Northern Pacific and the Milwaukee are practically on the same road bed, aren't they?

A. Yes.

Q. You are talking about points beyond Terry, Montana?

A. Right around Baker, for instance.

Q. Baker is now served only by the Milwaukee. How big a town is Baker?

[fol. 469] A. About 5,000.

Q. How big a town is Terry?

A. I don't know.

Q. Do you have any trouble getting in there to Baker from Bingen White Salmon right now?

A. We haven't had any occasion to try.

Q. You know, of course, there are joint through rates from Bingen White Salmon via the SP&S to Spokane thence Milwaukee to Baker, do you not?

A. I assume there are, yes.

Q. And you never had any occasion to use them?

A. No, we haven't gone into that territory.

Q. If the joint rates are available, you could get into the territory on joint through rates now existing, couldn't you?

A. In certain places, yes.

Q. I mis-spoke when I asked you that question. You can't get in there from Bingen White Salmon because that is in an area to which joint rates apply only from Vernonia, Oregon and that applies to all points west of Mobridge, South Dakota.

If the rate on all points on the SP&S were made available to points in the Milwaukee west of Mobridge similar to those joint through rates now in effect with the Milwaukee to points east of Mobridge from most of the points on the SP&S, you would be able to get into the Williston Basin territory, would you not?

A. Yes.

[fol. 470] Q. And if you had those, so far as Williston Basin is concerned, you would be quite happy?

A. I would like to try and see what I could do over there.

Q. But that would take care of your needs at Williston Basin, would it not?

A. Yes.

Q. When you say you wholesale approximately 100 to 150 cars per month, does that include the cars which you sell from your own mills at Olympia and Tillamook?

A. Yes.

Q. And of that—

A. No, not Olympia. Just Tillamook. Olympia is an export mill.

Q. Solely export?

A. Yes.

Q. Export off shore or—

A. Ship to Peru.

Q. The Far East?

A. Puerto Rico.

Q. Do you ship any via the Panama Canal to eastern United States?

A. No.

Q. Well, of that 150, 60 per cent is shipped on firm orders and about 40 per cent what you call transit cars. Define what you mean by transit car.

A. Well, we have a planing mill at Tillamook. We only make dimension down there, two inch, and sometimes, if [fol. 471] we don't have firm orders, we don't want to shut down the mill, we want to keep it going, so the boys down there load up what would be a normal standard car, two by four's and sixes and eighths and tenths and so forth, random lengths, and that's a standard car of dimensions. We start that rolling and pray that we sell it before it gets to a diversion point.

Q. Where is the principal market for your lumber?

A. Well, all through the middle west.

Q. How much of it is sold west of the Mississippi?

A. West of the Mississippi?

Q. Yes, what percentage?

A. I would say 60 per cent.

Q. Are you familiar with the rate situation as it applies to the eastern part of Iowa west of the Mississippi River? Do you know what the rate situation is there?

A. Not especially, no.

Q. Do you know whether or not you can get into there via the Great Northern, Northern Pacific through Minnesota Transfer and one of the connections beyond?

A. Is that about directly south of the Transfer?

Q. Well, it's south and slightly southwest, as I remember.

A. Well, we can't get back very far on a line south from the Minnesota Tranfer, I know that, but just what exactly the territory is, I don't know.

Q. How much of it sold on the Milwaukee west of the [fol. 472] line to which you can go back through Minnesota Transfer, do you know?

A. Of our production?

Q. Yes.

A. A very small per cent at this time.

Q. So that, to that territory you can reach by joint rates now from SP&S points, most SP&S points, can you not, but you cannot divert in transit beyond?

A. That's it.

Q. Now, take a point like Eugene. That's on the SP&S or Oregon Electric, rather. From Eugene, you can ship via the Southern Pacific to Portland, Union Pacific, Marengo, Milwaukee throughout this whole territory with diversion privileges to the major population centers in the northeast of the United States, isn't that true?

A. I didn't know it was true, no.

Q. You didn't know?

Mr. Maguire: Well, as a matter of fact, it isn't true. You are giving him a false assumption.

Mr. Rockwood: By cross leg routes.

Mr. Maguire: You can't go north of the Ohio or Potomac.

Mr. Rockwood: I said the principal population east of the United States.

Mr. Maguire: In that case, I will humbly apologize.

By Mr. Rockwood:

Q. As Mr. Maguire characterized, you reach that territory by joint rates from Eugene right now via Marengo [fol. 473] and the Milwaukee. You didn't know that? You weren't aware of that?

A. I didn't know it.

Q. You did not know that?

A. No.

Q. On the Albany-Sweet Home Branch, that's commonly referred to as the Santiam Branch of the Oregon Electric—

A. Yes.

Q. If the same basis of rates were made applicable from the Santiam Branch to this Milwaukee territory west of Chicago as is presently applicable from other Oregon Electric territories, much of your difficulties at Albany, between Albany and Sweet Home would be eliminated, is that not right?

A. Well, you are assuming in both cases we would ship to a customer in New York State or Maine or somewhere, is that true, for original destination?

Q. No, I am talking about roller cars, that some of them roll Great Northern, Northern Pacific and some can roll Milwaukee under the present rate.

A. But you can't roll them too far on your first shot, you know.

Q. When you start rolling, about how far will you bill on the first bit?

A. Yes.

Q. How far do you bill on the first bit?

A. Well, we bill quite a little to Omaha.

[fol. 474] Q. And your billing to Omaha, that moves for the most part, certainly, from Grants Pass and Roseburg Southern Pacific, Union Pacific?

A. That's right.

Q. And you bill through to Omaha?

A. Well—

Q. I mean, when you bill it on the northern lines, or do you use the Great Northern and Northern Pacific at all?

A. Once in awhile.

Q. You prefer the Milwaukee when you can, don't you?

A. Well, I don't know that I prefer them over any other railroad from that standpoint.

Q. Did you ever have any business connection with the Milwaukee?

A. Yes, sir.

Q. What was your connection?

A. I was purchasing agent.

Q. How long has it been since you were purchasing agent with the Milwaukee?

A. Twenty-eight years.

Q. Since then, you have been intimate—well, I will strike that question. You have had a lot of good friends in the Milwaukee since then?

A. Always had, yes.

Mr. Rockwood: I think that's all.

By Mr. Golden:

Q. You stated that you were interested in the develop-
[fol. 475] ment of the Williston Basin. Is there any oil producing territory in that area on the Milwaukee?

A. I don't know. The Shell has a couple of pretty big wells way in eastern Montana.

Q. Have you done anything so far to attempt to develop your market in the Williston Basin?

A. No.

Q. You now have rates to points on the Great Northern and Northern Pacific, in that area, do you not?

A. On the Northern Pacific, yes, to certain places. I think so.

Q. Do you have some customers along the line of the Northern Pacific and Great Northern in North Dakota?

A. Not now, that I know of. Not regular customers.

Q. How about in Minnesota?

A. Yes.

Q. West of the Transfer?

A. Yes.

Q. Do you sell on firm bids to those companies in Minnesota?

A. Yes.

Q. How many cars have you had refused by those companies since the first of the year?

A. I don't recall any have been refused.

Q. You stated, I believe, that 60 per cent of your marketing territory is in the middle west, west of the Mississippi, is that correct?

[fol. 476] A. Yes.

Q. If you had a car on the Milwaukee somewhere in that territory or toward the west of that territory which was refused by a shipper, would you have any difficulty then of disposing of that car in this principal portion of your marketing territory?

A. I didn't get the last part of your question.

Q. Well, you indicated that your principal market, I believe some 60 per cent of it, is in the middle west, west of the Mississippi River. Assuming now that you have a car somewhere on the Milwaukee back in that territory or toward the western portion of it and that car was refused. Would you have any difficulty in disposing of that car, since that is the principal market?

A. Not if we can divert it further east.

Q. West of the Mississippi?

A. Yes.

Q. Yes.

A. Or it might be east of the Mississippi.

Mr. Golden: That is all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Sackett, Mr. Rockwood made a little point about your having friends on the Milwaukee. Are you mad at anybody on the SP&S? Have you got friends there?

A. Yes.

Q. Have you got friends with the Northern Pacific and [fol. 477] Great Northern?

Q. Yes.

Mr. Rockwood: He never worked for us.

Mr. Maguire: Maybe that's a point in your favor. You can't tell.

By Mr. Maguire:

Q. Well, now, Mr. Rockwood asked you if you had rates into points in eastern Montana west of Mobridge the same

as you have, from the SP&S, the same as you have to points west of Mobridge—

Mr. Rockwood: East of Mobridge.

By Mr. Maguire:

Q. I beg your pardon. East of Mobridge, whether your troubles would be over. Do you consider that the diversion privileges which are now open to you if you ship via SP&S Spokane Milwaukee to points in the Milwaukee territory east of Mobridge, that those diversion privileges are sufficiently broad so that the moving back of the same rates with the same privileges would be a full solution to your problems of marketing?

A. What do you mean, moving back?

Q. I mean extending the territory, destination territory westward into Montana with the same diversion privileges or lack of diverson privileges as the case may be. Do you consider your problems would be entirely settled?

A. Well, we don't have any problems as yet, Tom, but I think it would be helpful if we could bill our rollers to any point on the Milwaukee between Spokane and Aberdeen, [fol. 478] say, South Dakota

Q. Would it be sufficient for your marketing purposes if your diversion, rights of diversion, if those rates were restricted entirely, however, to the Milwaukee Railroad or would you want diversion privileges beyond to their connections?

A. Certainly want them beyond.

Exam. Dishman: You used the term "rollers". Do you mean—

The Witness: Transit cars.

Mr. Maguire: That's all.

Recross Examination.

By Mr. Maguire:

Q. You understand if you move via Union Pacific, Southern Pacific, Union Pacific via Marengo, Milwaukee, you

have diversion privileges, maybe not 100 per cent throughout the United States, but you have substantial diversion privileges on those roller cars. You understand that?

A. Yes. You can't get south, though, or back west sometimes.

Q. Well, you can't get south of the Ohio River, as defined the Ohio-Potomac River. Do you know of any railroads that give you diversion in transit involving a substantial backhaul?

A. No.

Mr. Rockwood: That's all I have.

Exam. Dishman: Witness excused.

Mr. Maguire: Just one more. Mr. Rockwood gave me an idea.

Redirect examination.

By Mr. Maguire:

Q. Since, as Mr. Rockwood says, you don't get diversion privileges which will allow you a backhaul, can you route [fol. 479] stuff over the present route, lumber over the present route to Minnesota Transfer and divert back westward into Milwaukee local territory?

A. No.

Recross examination.

By Mr. Rockwood:

Q. Can you route lumber over the Milwaukee and divert over the Great Northern and Northern Pacific back into Montana?

A. Well, I don't think that's been established.

Q. Would you want to do that?

A. I don't know that we would. We might.

Q. It would be a very unusual situation, would it not, Mr. Sackett? Wouldn't it be rather unusual to want to backhaul out of Minnesota Transfer back into South Dakota on the Milwaukee? That would be unusual, would it not?

A. Well, if you had the rates the other way, we would shoot it—

Q. Which you can do now, can you not, all points east of Mobridge?

Mr. Maguire: You mean on the Milwaukee east of Mobridge?

Mr. Rockwood: Sure. Milwaukee points east of Mobridge. You move indirect from Spokane via the Milwaukee.

The Witness: Yes, but you can't divert lots of places from there.

By Mr. Rockwood:

Q. Can you divert backwards on the Milwaukee, do you know?

A. I don't know.

[fol. 480] Mr. Rockwood: I'll bet you don't know. That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please.

KENNETH W. LOVEGREN was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is Kenneth W. Lovegren?

A. Right. L-o-v-e-g-r-e-n.

Q. What is your business and where do you live?

A. Lumber business, Eugene, Oregon.

Q. And what particular branch of the lumber business, the manufacturing or sales end of it?

A. Sales, primarily wholesale but manufacturing some.

Q. Are you connected with any company, corporation or partnership and if so, will you state the name of it?

A. Lovegren Lumber Company, wholesale lumber.

Q. And in what capacity do you act with that firm?

A. Manager and part owner.

Q. Do you have any interest in any manufacturing plant?

A. Yes, a remanufacturing plant.

Q. What is the name of that company?

A. Walter Bushong Lumber Company.

[fol. 481] Q. Where is the remanufacturing plant located?

A. Eugene.

Q. Upon what tracks is it, by what railroad is it served?

A. Jointly by Southern Pacific and Oregon Electric.

Q. And are you generally familiar with what issues are involved in this case that are sought, establishment of joint rates through Spokane between the SP&S and the Milwaukee Road and its connections?

A. I think so.

Q. Now, could you tell me about how many carloads per year that your wholesaling concern ships?

A. On a monthly basis, two to three hundred, depending on the time of the year. Summer would be the higher figure.

Q. Now, what connection with your local, I mean, with your wholesale activities, if any, does the Walter Bushong Lumber Company have? How do they work together, if they do work together?

A. No connection except that Lovegren Lumber Company, the wholesale lumber company, handles the output of the Walter Bushong.

Q. I see. Do you handle sales, purchases, routing, or two of them or all three of them? What is your activity?

A. I have two buyers that do most of the purchasing. I am primarily working in sales.

Q. And do you engage both in so-called firm sales and in transit sales?

A. Yes.

[fol. 482] Q. About what proportion of your sales business is devoted to each?

A. 25 to 50 per cent is firm business, depending on the time of the year. The smaller percentage in the summer time and the larger percentage in the winter time.

Q. And from what sources, other than your mill, do you procure lumber for sale, that is, what localities?

A. The Riddle area, Roseburg, Eugene, Cottage Grove, upper Willamette Valley points, Lebanon, Sweet Home, Turner, a number of different areas. Also west, Coos Bay and other mills over in that area over toward Reedsport.

Q. And in filling orders, is it possible for you to go to any mill that you may select and immediately secure the material needed to fill your order, that is the dimensions, the specifications, the grades and so forth, or is it necessary to shop around among the various sources of supply to get the lumber to fill your orders?

A. It's a shopping proposition, definitely.

Q. In what area do you market your lumber?

A. The entire United States including California, Texas and the southwest, deep south, the east, central, very little west of the Rocky Mountains except California on the southwest.

Q. When you say "the deep south", do you mean states south of Kentucky and east of the Mississippi River?

A. Yes.

[fol. 483] Q. Is that what you refer to in the deep south?

A. Yes, clear to Florida.

Q. Now, do you, under the present rate adjustment, route transit cars under the through rates which now exist via the SP&S System to Spokane thence Milwaukee?

A. No.

Q. And for what reason?

A. Too dangerous.

Q. Too dangerous?

A. That's right.

Q. And what are the dangers, generally, or specifically, if you wish?

A. May never get it off of the Milwaukee for sale. It's in the wrong place.

Q. Will you state whether or not it is necessary in your transit business that you have through the railroad over which the car is travelling at the time and its connections free interchange and free diversion rights?

A. Very definitely.

Q. You are generally familiar with the fact that there are rates which apply via the Southern Pacific thence Union Pacific through Marengo and the Milwaukee toward the east, are you not?

A. Yes.

Q. Are you able to utilize that route fully in the matter of sending out transit cars?

[fol. 484] A. No.

Q. And what is the reason for that?

A. You would miss part of your southwest area.

Q. And do you know whether under those rates, you can reach south of the Ohio and Potomac Rivers? Can you get down into the deep south?

A. I couldn't say as to that. I don't know.

Q. Well, if the testimony should develop that you cannot, would that be a desirable route for you to send rollers over?

A. Yes.

Q. I said if you cannot reach the deep south.

A. I want to reach the deep south.

Q. Yes.

A. That's right.

Q. Well, then, if you want to reach the deep south, if that is the case, if you are restricted to north of the Ohio and Potomac Rivers, would that be a desirable route, the Southern Pacific, Union Pacific, Milwaukee, to send rollers over?

A. No.

Q. What is the situation which you have found with regard to reaching territory on the Milwaukee in Montana and the Dakotas? Do you have any rates into Montana off the SP&S?

A. Sometimes I wonder. I have had very poor experience in reaching points in the Dakotas with Milwaukee destinations.

Q. That is under the present routings?

[fol. 485] A. That's right.

Q. And rates. Now, then, do you maintain a full time traffic manager who is familiar with all the technicalities of routings and rates?

A. No.

Q. And when you have a car in transit and the customer wants to buy it, is there any one thing that you want to know about the situation right away?

A. We have to know immediately whether we can divert to that particular destination.

Q. Now, if rates were established and whatever necessary through routes were established to carry those rates into effect whereby you could ship SP&S to Spokane thence via the way of the Milwaukee to all points on the Milwaukee and also with the privilege of diversion to Milwaukee connections or routing through Milwaukee connections to the whole eastern and southern part of the United States, would such rates and routes be of benefit to you, desirable to your business?

A. Yes.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Are you one of these gentlemen, Mr. Lovegren, that wants wide open routes all over the United States via all routes which have rail connections?

A. Any route that will make my sales efforts more profit-[fol. 486] able, I am for it.

Q. Can you think of any place where you wouldn't find open routes and through rates desirable?

A. Not right off-hand.

Q. So the answer is that so far as you are concerned, you want wide open routes via all routes, and this situation with respect to the SP&S-Milwaukee is no different than from any other case throughout the United States where you want open routes, is that right?

A. What other part of the United States are you referring to?

Q. The entire United States in which you sell lumber.

A. I am having difficulty comparing.

Q. Do you know down in the southeast—I am sure I don't—do you know whether rates are open via all routes,

we'll say, out of Chicago to any points that you want to go in the southeast, do you know?

A. The L&N routes are a little difficult.

Q. They are not open? You would like to have them open?

Mr. Maguire: He said a little difficult. He didn't say they weren't open.

By Mr. Rockwood:

Q. Are they open?

A. I believe they are.

Q. With limitations?

A. With limitations.

Q. And you would like to have those limitations removed?

[fol. 487] Mr. Maguire: Of course, Mr. Examiner, the question of restrictions and routings on the L&N are not an issue in this case.

Mr. Rockwood: I am trying to find out the extent to which this gentleman wants through rates and the reasons.

Mr. Maguire: I think he answered your question, and he said he wants through rates—

Mr. Rockwood: Just a moment. Mr. Examiner, if Mr. Maguire will please refrain from summarizing the witness' testimony and permit me to go on with my cross examination—

Exam. Dishman: I understood the witness to say, in answer to your question, he didn't like any restrictions. Isn't that your answer?

The Witness: Any restrictions that interfere with reaching my customers.

By Mr. Rockwood:

Q. Do you sell lumber in Iowa?

A. I do.

Q. Do you sell lumber in South Dakota?

A. I do.

Q. Do you sell lumber in North Dakota?

A. Some.

Q. Minnesota?

A. Yes.

Q. Illinois?

A. Right.

[fol. 488] Q. Missouri?

A. Right.

Q. Will you give us one instance of a sale you lost in any point in South Dakota?

A. You bet your life.

Q. Please, let's have it. "That's the one I was waiting for," said the witness.

A. This morning—we go to work at 7:00 o'clock in the morning—

Q. So do I.

A. —and this morning before 7:30, I had lost two sales because of the Milwaukee restrictions via the northern lines. One of them was GTW 585127 out of Narrows, Oregon, OE-SP&S. I had a sale at Ellensdale, North Dakota on the Milwaukee and couldn't deliver.

Q. Because you couldn't divert from the Northern Pacific to the Milwaukee point?

A. Hadn't reached Spokane yet.

Q. All right, you could have filled that order with that car?

A. I could have filled that order with that car.

Q. Why didn't you replace that order with another car?

A. We tried. In fact, this morning we wired our customer suggesting that we ship this week from another mill on the Southern Pacific. We could reach it from Southern Pacific, Marengo, Union Pacific. When I had left, we hadn't received an answer, but many times the reason a customer will take a transit car is because he needs it now, not this [fol. 489] week or next week. That is one of the advantages of transit cars.

Q. Did you ever have a car rolling on the Union Pacific west of Omaha that you could use to fill an order on the Milwaukee?

A. Yes.

Q. Are you able to divert it from the Union Pacific west of Omaha to Milwaukee points?

A. Some Milwaukee points.

Q. All right, this Ellensdale, could you divert up to there?

A. No, that would have to go Southern Pacific, Portland, Union Pacific, Marengo.

Q. If you had a car rolling on the Milwaukee, could you divert to Grand Forks, North Dakota?

A. I couldn't say as to that.

Q. As a matter of fact, Mr. Lovegren, if there are any limitations on routes, you will find yourself in that situation, that you cannot use particular cars to fill particular orders. You have to pick and choose of the cars that you have in transit, isn't that right?

A. Would you repeat that?

Mr. Rockwood: Will you read the question?

(Question read.)

The Witness: The only serious limitations seem to be with the Milwaukee points. This particular sale that I lost, I would not have lost if the Spokane Gateway would have [fol. 490] been open to the Milwaukee points.

Now, the other one I lost was in Coon Rapids, Iowa, same situation. The car had not reached Spokane, was still west of Spokane, and I couldn't divert.

By Mr. Rockwood:

Q. Suppose the car had been on the Union Pacific, could you have reached Coon Rapids, Iowa?

A. I am quite sure I could.

Q. You think you could?

A. I would have to check.

Q. You don't know that, do you?

A. I don't know it.

Q. You can't reach all Milwaukee points by diversion from the Union Pacific, can you?

A. Not all.

Q. No.

A. But far more than from the north.

Q. Where is Riddle, Oregon?

A. That is about 30 miles south of Roseburg.

Q. And served solely by the Southern Pacific?

A. That's right.

Q. Roseburg is solely Southern Pacific?

A. That's right.

Q. Eugene is served by the Oregon Electric and the Southern Pacific?

A. That's right.

[fol. 491] Q. What road serves Cottage Grove?

A. OP&E connects with the Southern Pacific.

Q. Both serve Cottage Grove?

A. It's just a branch.

Q. Oregon, Pacific and Eastern, is that what they call it?

A. Yes.

Q. And the Southern Pacific?

A. Yes.

Q. It is not served by the Oregon Electric?

A. No.

Q. Coos Bay solely Southern Pacific?

A. Right.

Q. Sweet Home is served by the Oregon Electric?

A. That's right.

Q. Lebanon is served by both Oregon Electric and the Southern Pacific?

A. I believe so.

Q. For the most part, the mills you purchase from are located on the Southern Pacific, are they not, for the most part?

A. Yes.

Q. Served solely by the Southern Pacific?

A. We purchase quite a few cars served by both railroads, mills served by both railroads.

Q. As far as the mills are concerned, most of them are solely Southern Pacific?

[fol. 492] A. No. Probably 60 per cent.

Q. Are served solely by the Southern Pacific?

A. With no possibility of shipping any other way.

Q. If you include served by the Southern Pacific and the Oregon Electric, what is the percentage in addition to the 60 per cent?

A. Probably about 30 per cent.

So, a total of 90?

A. Yes.

Q. So that 10 per cent of the mills that you buy from are served only by the Oregon Electric?

A. Yes. Perhaps a little higher at some times.

Q. Sweet Home is one of those points?

A. I believe so.

Q. How much do you sell ultimately east of the Mississippi out, in a year's time, percentage-wise?

A. That's a hard question.

Q. Can you give us some notion?

A. My guess would be 60 per cent. Fifty to 60 per cent.

Q. Fifty per cent. You sell very little west of the Rockies. Of the 50 per cent not sold east of the Mississippi, how much is sold in California and the southwest?

A. Very little in California. Perhaps, by southwest, do you mean Texas and New Mexico?

Q. Well, you used the term first. I don't know what you mean. What do you mean by the southwest?

[fol. 493] A. That's what I mean.

Q. All right, how much do you sell down there, percentage-wise?

A. Ten to 15 per cent.

Q. So, we are up to about 60 or 65 per cent east of the Mississippi and in the southwest. West of the Mississippi, where are your markets?

A. Michigan, which is the central states, Illinois, Indiana —well, I guess Indiana would be more of an eastern state.

Q. You probably misunderstood me. I said west of the Mississippi, what are the principal markets, and of course, Michigan, Illinois and Indiana are all east of the Mississippi.

A. Wisconsin and Minnesota are good sales areas.

Q. Well, that's west, Minnesota, but Wisconsin is east of the Mississippi.

A. I guess my geography is a little faulty.

Q. All right. What percentage of your sales are in the State of Iowa?

A. Not too large.

Q. How much in Minnesota?

A. With 48 states to work on, you are asking hard questions, on the spur of the moment.

Q. I realize that. I would be surprised if you had precise percentages. I was trying to get some general notion of your sales picture.

A. Bulking the Dakotas, Montana, Wisconsin, Minnesota area, perhaps 10 to 15 per cent.

[fol. 494] Q. Of your total output, and now, you have not included in that list—you included Montana, the Dakotas, Minnesota and Wisconsin, did you?

A. That would be about it.

Q. All right, how much in the State of Iowa? You said very little before. How much in Nebraska?

A. Our Nebraska sales are comparatively light.

Q. And you have got direct through rates into the Nebraska territory with all the opportunity in the world to transit, have you not, via the Union Pacific?

A. Yes, that's true.

Q. On firm sales in Iowa and South Dakota at points located solely on the Milwaukee, served solely by the Milwaukee, when you make firm sales, do you route via the Milwaukee?

A. Many times, yes, depending on the service of the railroad.

Q. So that what you miss on the Milwaukee route is the chance of diversion and transit on what have been called roller cars?

A. That's right.

Q. But you can roll cars over the Union Pacific into Omaha, can't you?

A. We do.

Q. And you can roll cars over the Great Northern and Northern Pacific into Minnesota Transfer?

A. We do.

Q. The only route at present where you can't roll cars as [fol. 495] far as you want to is over the Milwaukee?

A. That's right.

Q. How many firm orders in the last year were refused by customers at delivery point?

A. In what area?

Q. Throughout the United States.

A. A good many reasons why cars are refused. It's a good question, a difficult question. I would say probably a dozen.

Q. Out of the total of some three or four thousand cars that you have sold, including firm sales and transit cars, about a dozen of them have been refused?

A. Yes.

Q. How many were refused at delivery points on the Milwaukee served only by the Milwaukee between, we'll say, Mobridge, South Dakota and Chicago?

A. Only one that I can recall.

Q. What station was that?

A. Madison.

Q. Madison, Wisconsin. How did that car move, do you remember?

A. I don't recall.

Q. Did it move Milwaukee direct or did it move—

Mr. Maguire: Pardon me. He said he didn't recall. That was his answer. Why do we have to beat that to death? I object to that question.

By Mr. Rockwood:

Q. With Mr. Maguire's permission and the Examiner's [fol. 496] permission, I will ask, you cannot tell us whether it moved northern routes via Minnesota Transfer thence a connecting line or whether it moved via the Milwaukee all the way from Spokane?

Mr. Maguire: Mr. Examiner, the witness said he couldn't recall.

Exam. Dishman: Do you know whether it moved that way, or do you recall?

The Witness: I don't recall what the origin was.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. You don't recall what the origin was?

A. Or the origin carriers.

Q. I see. It might have moved Southern Pacific, Union Pacific to Omaha via connection into Madison?

A: It might have. I don't recall. I just recall getting many notifications of the car being—

Q. You said that you are familiar with the issues of the case. When did you become familiar with the issues in this case?

A. We have had trouble with Milwaukee points for as long as we have transferred.

Q. When did you become familiar with the issues of this case?

A. Do you mean in regard to the proposed rate changes?

Q. I don't know. Mr. Maguire asked you if you were familiar with the issues in the case, and you said you were.

Mr. Maguire: Just a moment. That is a direct misquo-
[fol. 497] tation of my question. My question was whether he was familiar with the issues; namely, the proposed routes and rates. That was the question I asked him. I remember it very distinctly.

By Mr. Rockwood:

Q. All right, when did you become familiar with the issues of the case as defined by Mr. Maguire?

A. Several months ago.

Q. How many months ago?

A. I don't recall exactly, probably three or four, possibly more.

Q. Who familiarized you with the issues of the case?

A. The Milwaukee representative in the Eugene area, Art Brett.

Q. Did he present you with any reading matter on the subject?

A. No.

Q. Did you see a copy of the complaint as it has been drafted by the Milwaukee?

A. Later I was presented with some material, but I didn't have time to read it. Still haven't read it.

Q. You didn't read Mr. Draver's book?

A. No.

Q. Did you ever file a request with the Oregon Electric or the SP&S or with any rail bureau for through rates of the category that the Milwaukee is now seeking?

A. You mean, requested a diversion?

Q. No, a request for a change in the rate structure to accomplish that which the Milwaukee now seeks to accom-
[fol. 498] plish in this complaint.

A. No, we are in the lumber business.

Q. So, being in the lumber business, you were not sufficiently concerned about it to file a request for a change in the rate structure with rail officials?

A. We are concerned, but we did not file.

Mr. Rockwood: That's all I have.

Exam. Dishman: Any more cross examination?

Mr. Torinus: No.

Redirect examination.

By Mr. Maguire:

Q. Mr. Lovegren, were you also approached and familiarized with the contentions of the SP&S and the intervenors in this case with their side of the case?

A. No one approached me, no.

Mr. Maguire: I think I have no further questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Ed Kellenberger was sworn and testified as follows:

Direct examination.

By Mr. Lutterman:

Q. Will you please state your name?

A. Ed Kellenberger.

Q. Where do you reside?

A. Lebanon.

Q. What business are you in?

A. I have a sawmill between Lebanon and Sweet Home.

[fol. 499] Q. And what is your capacity with respect to that mill, I mean, your personal connection with it?

A. I am the owner and operator and sales manager and all it takes to operate it, outside of the rest of the crew.

Q. And approximately what amount of lumber do you cut in a day in your mill?

A. Depending on what we are cutting, from 50 to 60,000 a day.

Q. A day?

A. Yes.

Q. Is some of that production shipped out by rail?

A. A big percentage, yes.

Q. Approximately how many cars do you, that is, railroad cars, do you ship in a week or a month?

A. Depends on the season and market conditions, anywhere from eight to ten cars a week. That is probably a maximum.

Q. On what railroad line or lines is your mill located?

A. Oregon Electric.

Q. Is it served by any other rail line than the Oregon Electric?

A. No.

Q. How do you dispose of your production, that is, do you sell some of it direct or all through wholesalers?

A. We sell both ways. We sell quite a few firm orders and quite a number of transit cars and we sell what we can sell direct to the consumer.

Q. In other words, you do make some sales direct from [fol. 500] the mill to the consumer?

A. That's right.

Q. And generally speaking, in what territory have you made such direct sales, that is, sales directly from the mill to the consumer?

A. Idaho and Montana and Utah.

Q. I take it, Mr. Kellenberger, that you are not a so-called rate expert?

A. That's right.

Q. You are not acquainted in detail with railroad rates or practices with respect to transit, etc. in detail?

A. I don't know anything about the rates, that is, the technicalities of it.

Q. Calling your attention to what has been introduced here as Exhibit No. 9, and incidentally calling your atten-

tion first to the insert in the upper left-hand corner of Exhibit No. 9, which indicates the SP&S System, is your mill located on that little portion of the SP&S System shown in red on that insert?

A. We ship from The Narrows, and I guess that's on this map.

Q. Called the Sweet Home Branch, isn't that right?

A. Sweet Home Branch.

Q. And that's the branch you are on?

A. Yes.

Q. Calling your attention to the area shown on the lines of the Milwaukee railroad colored in green and in yellow and that portion of that area which is west of the Twin [fol. 501] Cities, Minneapolis and St. Paul, generally west of that and what is shown as being on the lines of the Milwaukee Railroad, are you interested in that area generally for marketing your products directly from the mill?

A. Yes.

Q. And if at the present time there is a rate disadvantage which would prevent you from shipping from your mill located on that portion of the SP&S shown in red on the insert to any stations which are served by the Milwaukee Railroad only at points east of Minneapolis and St. Paul, if there is a rate disadvantage which would require you to pay a combination or higher rate to reach those points, will you state whether or not that would be a disadvantage to you in marketing your production?

A. Yes, it would be.

Q. And if that situation existed, and if, as a result of this or some other proceeding, joint through rates were prescribed which would be on the same or similar basis as existing joint through rates via the Northern Pacific or Great Northern and which would be substantially less than the existing combination rate, would that be of a benefit to your operation?

Mr. Rockwood: Just a moment. I object to that on the grounds no foundation has been laid because he has not shown any familiarity whatsoever with the rate situation on the Great Northern and Northern Pacific.

Mr. Lutterman: Well, I qualified my question, Mr. Rock-
[fol. 502] wood, by asking him to assume that is correct, and I might go further and assume that is what has been established as part of the record thus far in the case.

Mr. Rockwood: That question, in substance, is merely this: If the rate situation would be better if the Milwaukee wins this case than it is now, better for you? Would that be of advantage to you?

Exam. Dishman: Have you developed where his shipments go?

Mr. Lutterman: He already testified he is selling at the present time—I am speaking now only of his direct sales from the mill to the consumer—he testified that he is making direct sales from his mill to this area that I am speaking of. Now, I am just saying that if he has at the present time a rate disadvantage, which the record clearly establishes, if that is removed if it would assist him in making sales to local points on the Milwaukee in that area. I think that's a fair question.

Exam. Dishman: Do you know anything about the rates you pay to this area?

The Witness: The only thing I know, sometimes when we are trying to take firm orders or transit cars, they will tell us that we can't ship off of our line. There is a differential in the rate.

By Mr. Lutterman:

Q. Who tells you that?

A. The brokers.

Q. To what point is there that disadvantage?

[fol. 503] A. Well, some points. I don't pay too much attention to them. They will call me for a car of lumber and I will quote them on the car, and we will get together. When it comes to the shipping instructions, they begin to figure out how they are going to route the car and find out it's going to cost six and a half cents more to get that car of lumber a hundred over to where they want to put it and we will lose the business.

Exam. Dishman: Where are some of these brokers located?

The Witness: Mr. Lovegren is one of them. We sell him lots of lumber. I think he quoted one of our cars.

By Mr. Lutterman:

Q. The one he spoke of on the stand. By the way, you were here and heard his testimony this afternoon, is that correct?

A. That's right.

Q. Will you state whether or not, in that circumstance, the wholesaler or broker with whom you are doing business will tell you that he can't take one of your cars to sell to a point located on the Milwaukee Railroad?

Mr. Rockwood: Just a moment. He talked about some six and a half cents. I think I know what he is talking about, but may I ask the witness a question?

Mr. Lutterman: I would like to finish with the witness.

Mr. Rockwood: They are right in line with your questions.

Mr. Lutterman: Wait until cross examination.

Mr. Rockwood: I am objecting on the grounds no foun-
[fol. 504] dation has been laid.

Exam. Dishman: Does the witness know where they are destined?

The Witness: Not always.

Exam. Dishman: How did you know about the six and a half cents?

The Witness: To get from one road to another. They tell me they will have to buy on the Southern Pacific to get it on the road to the customer's destination.

Exam. Dishman: Irrespective of where the destination is?

The Witness: Not always that way. Quite a number of cases where, when it is that way, when we lose the business is when they find out we can't compete with some of the shippers on the Southern Pacific.

Exam. Dishman: See if you can ask a direct question.

By Mr. Lutterman:

Q. Mr. Kellenberger, in that connection, have you been advised that they cannot buy from your mill because the

car is destined to some points on the Milwaukee Railroad which requires a higher rate than if the car originated on a mill located on the Southern Pacific, for instance?

A. Well, how was that again?

(Question read.)

Mr. Rockwood: I am going to object to that on the grounds it's hearsay. Advised by whom?

Exam. Dishman: You had in mind the broker?

Mr. Lutterman: The broker. That's what we have been [fol. 505] talking about.

Mr. Rockwood: What broker?

Mr. Lutterman: I frankly fail to see what is so funny. That question is more direct and intelligible than any that have been asked from that side of the table on cross examination.

Mr. Rockwood: Thank you very much. I defer to your judgment. As a matter of fact, this six and a half cents he talks about—

Exam. Dishman: Couldn't you bring that out on cross examination?

Mr. Rockwood: The only thing is, when he is talking about the six and a half cents, I want to find out what he is talking about so they will be talking about the same thing. That's why I am asking counsel to lay a foundation. The six and a half cents was the thing that raised all of this turmoil, Mr. Lutterman.

Mr. Lutterman: I think I know what you are talking about, but I think also I know what I am trying to find out from this witness.

Exam. Dishman: The question that was read, do you understand that question?

The Witness: Well, yes, I believe I do, but to take a specific case off a telephone conversation, that would be pretty hard to do. I don't have anything in writing from a broker back to that.

Exam. Dishman: Mr. Lutterman, the witness was talking [fol. 506] about the question, but I guess you didn't hear it. Will you repeat it, please?

(Answer read.)

By Mr. Lutterman:

Q. Well, Mr. Kellenberger, can you state whether or not you have experienced any difficulty in selling any of your production to either directly or through brokers to points located on the Milwaukee Railroad because of a higher rate situation than exists over other lines?

A. I have had cars, transit cars that we wanted to send to certain areas in Montana, and we would be penalized on the freight to the point where we wouldn't be able to sell them.

Exam. Dishman: What happened to those cars?

The Witness: Sell them to somebody else.

By Mr. Lutterman:

Q. And was that because they were at points located on the Milwaukee Railroad?

A. Well, I assume they were. I wouldn't have positive proof of what line they are on.

Mr. Lutterman: I think that's all the questions I have.

Cross examination.

By Mr. Rockwood:

Q. You stated, Mr. Kellenberger, that your mill shipped a maximum of eight cars a week. How many cars did it ship in the year 1953 out of your mill, do you remember?

A. I couldn't tell you that.

Q. It was in the neighborhood of 200, wasn't it?

A. I wouldn't know that.

[fol. 507] Q. In the year 1952, you shipped substantially less than 100, did you not?

A. I couldn't tell you those figures, either.

Q. In 1951 do you know how many you shipped?

A. No, I don't.

Q. For no period in the past can you tell us on a 12-month basis the total number?

A. Not without going to my record.

Q. You don't have that information with you here?

A. I don't.

Mr. Rockwood: That's all.
Exam. Dishman: Anything more?

Redirect examination.

By Mr. Lutterman:

Q. I take it your source of income is derived from the lumber which you sell from that mill, is that correct?
A. That's right.
Q. That's your living, is it not?
A. That's right.

Mr. Lutterman: That's all.
Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Mr. Duncan, please.

William Paul Duncan was sworn and testified as follows:

[fol. 508] Direct examination.

By Mr. Maguire:

Q. Will you state your full name, Mr. Duncan?
A. William Paul Duncan.
Q. Where do you live and what is your business?
A. I live in Seattle. I am vice president of the Duncan Lumber Company, a Washington corporation, and I am also partner in the Duncan Wood Gutter Company.
Q. And so far as the Duncan Lumber Company is concerned, are you wholesalers of lumber and forest products?
A. Yes.
Q. And over what part of the United States do you market lumber?
A. Oh, all over the United States with probably the exception of California.
Q. Do you deal strictly in lumber or in other manufactured forest products?
A. Various forest products.

Q. As well as lumber?

A. Yes, sir, as well as lumber.

Q. And where is your general source of supply of lumber which you wholesale?

A. The Pacific Northwest including Oregon, Washington, British Columbia, Idaho—I think that's all.

Q. Do you buy lumber at any points served by the SP&S or any of its subsidiaries?

A. Yes, we do.

[fol. 509] Q. Can you name some of the points at which you have bought lumber within the past few years?

A. From Wauna, Oregon, Westport, Eugene, Oregon, Lebanon, Sweet Home.

Q. Have you bought any forest products of any kind at Astoria, Oregon?

A. Yes, we have.

Q. And what did that consist of? Was that lumber?

A. That wasn't very recent, however.

Q. It wasn't?

A. No. I would say it's been more than 18 months since we bought anything from Astoria.

Q. What was it then?

A. It was lumber.

Q. And do you deal both in firm orders or filling firm orders or firm sales, as well as transit cars?

A. Yes.

Q. Can you give me just a rough estimate as to the proportion of the two?

A. Probably 60 per cent firm orders and 40 per cent transit cars.

Q. Now, about what is your annual volume of lumber which you wholesale either by firm orders or on transit cars?

A. Roughly, 1000 carloads a year.

Q. Now, it is proposed by the complainant in this case that the SP&S and its subsidiaries be required to establish [fol. 510] joint through rates and the necessary through routes on lumber and other forest products from points on the SP&S System via Spokane, Washington thence the Milwaukee Railroad and its connections with similar transit

privileges being available via those rates and routes as are now available via other rates and routes applicable through Spokane.

What affect would that have upon the conduct of your business, those additional routes and rates?

A. It might open up new sales areas for us and in some instances, it might enable us to purchase lumber from mills served by the Oregon Electric and SP&S where we have in the past been restricted.

Q. And when the lumber market is normally active, is it possible for a wholesaler, if he gets an order for a certain grade, specifications and so forth just to go to any mill that is putting out lumber and get that order filled, or must he shop around to find the particular grades, dimensions and specifications?

A. It's necessary to shop around.

Q. And would the opening up of additional rates and consequent routes at mills on the SP&S enable you to fill orders for local points on the Milwaukee Railroad which you are not now able to reach by reason of the rate structure?

A. I believe it would.

Q. And would those additional rates and routes be de- [fol. 511] sirable to you in the interest of your business?

A. Yes.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. By desirable, you mean you would like to have available the broadest possible set of open routes with transit privileges and diversion rights from all mills in this Pacific coast territory to destinations throughout the United States?

A. In our business that would be an advantage.

Q. Yes, and that's what you mean by saying it would be desirable to open up just one more route?

A. Yes, sir.

Q. Where is Morton, Washington?

A. It's a local Milwaukee Railroad point.
Q. Where is it, south of Seattle?
A. South of Tacoma.
Q. Is there a sawmill located there?
A. Yes, sir. There is more than one sawmill.
Q. Do you buy lumber there?
A. Yes, we have bought lumber there.
Q. Do you wholesale lumber out of Morton, Washington?
A. That's right.
Q. That's a point served only by the Milwaukee?
A. Yes, sir.

[fol. 512] Q. If you, as wholesaler, market a car out of Morton, are you permitted to divert it in transit before the car reaches Spokane on the Milwaukee to destinations on the Great Northern and Northern Pacific?

A. By paying the arbitrary overtax.

Q. By paying the higher rate. You are not able to do it at the same joint through rate?

A. I wouldn't know for sure. I believe that's the situation.

Q. Could you route that car Milwaukee to Spokane, Great Northern and Northern Pacific to Minnesota Transfer and thence beyond?

A. I think not.

Q. It would be very desirable, would it not, to have that open as a route for your business, would it not? It probably would?

A. Yes, it probably would.

Q. That's one of the things you would like to have?

A. No, I am not contending I would like to have that.

Q. You are not asking in this case, but it is one of those things you would like to have within your general statement of policy?

A. Well, insofar as the routes are feasible and reasonable.

Q. You want them?

A. Yes, sir.

Q. Well, is that a feasible route, Milwaukee to Spokane thence Great Northern to Minnesota Transfer, is that feasible?

A. I presume it is.

Q. So, insofar as it is feasible, you would like to have [fol. 513] it, but you don't have it now. Do you know? Have you ever asked?

Mr. Maguire: Are you telling him or asking him that?
Exam. Dishman: Did you answer?
Mr. Maguire: He didn't answer.
The Witness: I didn't feel an answer was necessary.
Mr. Maguire: It was a statement, as a matter of fact.
Mr. Rockwood: That's correct.

By Mr. Rockwood:

Q. Did you ever ask the Milwaukee to make rates out of Morton to apply via the Great Northern and Northern Pacific to Minnesota Transfer?

A. We never asked for any special rates.

Q. Did you ever ask the Oregon Electric for rates via the Milwaukee to this Milwaukee territory?

A. No, sir.

Q. Did you ever request any railroad official or any bureau of railroad carriers to make available through routes off the Oregon Electric such as you now say would be desirable for your business?

A. We have never requested it.

Q. When did you first hear of this case, Mr. Duncan?

A. I believe it was between six and eight years ago.

Q. Who told you about it?

A. I first heard about it from a gentleman by the name of Bob Burnett with the Traffic Service Corporation who publishes a rate service.

[fol. 514] Q. Were you called on by the Milwaukee or northern lines people?

A. Yes, we were called on by all the lines regularly.

Q. I mean, in connection with this case. Did the Milwaukee come in and discuss this case with you?

A. Yes, sir.

Q. Did the northern lines people discuss it with you?

A. I have discussed it with representatives of all the lines.

Q. Who got there first?

A. I don't know. I think it was the Milwaukee,

Q. Are there other mills in Washington that are situated similar to the mills in Morton, Washington served only by the Milwaukee?

A. Yes, there are many mills that are on one line only.

Q. I mean on the Milwaukee only.

A. Yes, sir.

Q. So there are many mills in Washington that are in the situation the same as the mills in Morton?

A. Yes, sir.

Mr. Rockwood: That's all I have.

Redirect examination.

By Mr. Maguire:

Q. Mr. Duncan, did you come here prepared to testify as to the various routes open regardless of the originating line, that is, did you come prepared to testify about the routes open via the Milwaukee, Great Northern, Northern Pacific and so on?

A. No, sir.

[fol. 515] Q. And with regard to your replies to questions as to whether you had ever requested the establishment of these joint through rates off the SP&S, has your business or have you engaged in any great litigation or disputes of any kind, or are you primarily interested in selling lumber?

A. We are merely interested in selling lumber.

Mr. Maguire: That's all.

Recross examination.

By Mr. Rockwood:

Q. You know, do you not, that a good many people interested in selling lumber have occasion to go to the rail carriers to point out situations that they think are improper and ask that they be corrected?

A. Yes, sir. We have done that, but not with regard to rates.

Mr. Rockwood: That's all.
Mr. Maguire: That's all.
Exam. Dishman: Witness excused.

(Witness excused.)

J. M. ALEXANDER was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is J. M. Alexander?
A. Yes.
Q. Where do you live?
A. Seattle, Washington.
Q. And what is your business?
[fol. 516] A. I am the owner of Alexander Lumber Company, a proprietorship in Seattle, and president of the Indianola Lumber Company, Inc., an Oregon corporation located at Lebanon, Oregon.

Mr. Rockwood: We can't hear you.
The Witness: President of the Indianola Lumber Company at Lebanon, Oregon.

By Mr. Maguire:

Q. Let's first discuss the Indianola Lumber Company at Lebanon. Is that mill served by both the Oregon Electric and the Southern Pacific?
A. No, Oregon Electric only.
Q. And how is the output of the Indianola Lumber Company marketed? Is it done directly by that company, or is it done through wholesaling agencies?
A. The sales are handled by our wholesale business, Alexander Lumber Company.
Q. Now, this mill, is that located right in Lebanon, or is it?
A. No, between Lebanon and Sweet Home. Post office address is Lebanon.
Q. Where is your billing station?
A. Waterloo.

Q. And is that a local point on the Oregon Electric?

A. Yes.

Q. Now, about what is the annual output of the mill on the—that's on the Santiam Branch?

A. Yes.

[fol. 517] Q. On the Santiam Branch.

A. The annual output?

Q. Yes.

A. About 12 million feet.

Q. In cars, could you express it that way? How many?

A. About 500.

Q. Now we will take up the activities of the Alexander Lumber Company, which is the marketing sales agency for the Indianola, is that right?

A. That's right.

Q. And when you sell lumber from the Indianola mill, are there any territories in the country which, by one reason or by the reason of the lack of through rates, you have to by-pass?

A. Well, we do not even attempt to sell lumber west of the Twin Cities due to restricted routes.

Q. Does that apply to the Northern Pacific and Great Northern or the Milwaukee? Which were you talking about—or both?

A. Both.

Q. Let's address ourselves to the Milwaukee in the first place. Do you have any through rates from the Santiam Branch to any points on the Milwaukee?

A. I have just understood there were restrictions, and I haven't taken—

Q. You haven't gone any further than that?

A. No.

[fol. 518] Q. Now, would the establishment of routes with the Oregon Electric and SP&S to Spokane and thence via Milwaukee, single factor joint through rates with full line, that is, with the Milwaukee and also with the Milwaukee and its connections, with the usual transit privileges, would that be of benefit to you in marketing the product of that mill?

A. It would open up the territory of western Minnesota and the Dakotas where we could at least try to do some business.

Q. Now, then, does the Alexander Lumber Company have other activities besides disposing of the output of the Indianola Lumber Company?

A. Yes.

Q. Do you do other wholesaling?

A. Yes.

Q. Do you buy any lumber from SP &S points or Oregon Electric points?

A. Yes, considerable.

Q. And could you name some of those points where you buy lumber?

A. Regular movements from Wilsonville, Cornelius, Forest Grove, and Bingen White Salmon area and Lebanon and Sweet Home.

Mr. Rockwood: Just a moment. I want to get those down. Will you excuse me? Wilsonville, Cornelius, Forest Grove—

The Witness: Bingen White Salmon, Lebanon and Sweet Home.

By Mr. Maguire:

Q. And is Wilsonville a local point on the Oregon Electric not served by any other line?

[fol. 5[illegible]] A. Yes, that's my understanding.

Q. How about Cornelius?

A. Cornelius is local.

Q. And Bingen?

A. Bingen is.

Q. Any other places where you buy lumber that are not served by any other railroad?

A. No. Forest Grove is joint Southern Pacific and OE.

Q. Do you buy any at Albany?

A. Yes.

Q. And that, I believe, to shorten this, is joint Southern Pacific and Oregon Electric. You will pardon that leading, won't you, Mr. Rockwood?

Mr. Rockwood: When I get mad, I object.

By Mr. Maguire:

Q. Are you a railroad freight rate expert?

A. No.

Q. You are a salesman of lumber, I gather, and producer of lumber primarily?

A. That's right.

Q. So then, upon the information that you said you received that there were restrictions, you have just laid off that territory on the Milwaukee, is that it?

A. That's it.

Mr. Rockwood: I think that question was limited to the Santiam Branch, wasn't it?

[fol. 520] Mr. Maguire: Well, I beg your pardon. You are quite right.

By Mr. Maguire:

Q. So far as is produced at other points on the Oregon Electric, have you been willing to route into territory in the Dakotas or Montana west of the Transfer?

A. Will you repeat that question again?

(Question read.)

Q. Via Milwaukee?

A. Well, for several years we haven't developed many sales organizations in those States west of Minnesota.

Q. And what was your understanding as to the availability of unrestricted rates from the other Oregon Electric points into that territory? Was it your understanding there were restrictions or were not restrictions?

A. Well, my understanding is that Northern Pacific and G. t Northern deliveries only could be made from Oregon Electric points of origin.

Q. And do your sales operations—don't know if I asked you this or not—extend to areas beyond the Mississippi River?

A. Yes.

Q. East of the Mississippi?

A. Yes.

Q. And what part of the country east of the Mississippi do you cover in your sales operations?

A. Well, the states generally east of the Mississippi and north of the Ohio River.

[fol. 521] Q. Do you get into the south at all and southeast?

A. Very little.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. To the territory east of the Mississippi and north of the Ohio River, were you ever told that you could ship from Oregon Electric points via Marengo and the Union Pacific on through rates?

A. Not specifically.

Q. You didn't know that?

A. That I recall, no.

Mr. Maguire: East of the Mississippi?

Mr. Rockwood: To points east of the Mississippi from Oregon Electric points to points east of the Mississippi and north of the Ohio you can ship on through rates to that territory via Southern Pacific—

Mr. Maguire: Via Oregon Electric.

Mr. Rockwood: —Marengo, Union Pacific—excuse me. I mis-spoke. Thank you, Mr. Maguire.

By Mr. Rockwood:

Q. Ship from points served by the Southern Pacific via Southern Pacific, Union Pacific, Marengo, Washington and Milwaukee?

A. No, I am not familiar with it.

Q. Is, there any territory east of Minnesota Transfer which is at the Twin Cities, which is the limit of your [fol. 522] trade area, I take it, which could not be reached by joint through rates via some route at the present time?

A. East of the Transfer that cannot be reached?

Q. Are there any points east of the Transfer that cannot be reached by joint rates via some route?

A. Not that I can think of, no.

Mr. Rockwood: That's all.

Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Call Mr. Ihnet.

JOHN G. IHNET was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is John G. Ihnet?

A. That's right.

Q. And have you prepared a statement in support of the complaint in this case?

A. I have.

Q. Now, before you start your statement, I would ask you to stop at the conclusion of the second paragraph of your prepared statement. There are some questions I wish to ask you at that time.

A. My name is John G. Ihnet. I reside at 422 Fourth Avenue North, Great Falls, Montana. I am employed as [fol. 523] Manager of the Transportation Bureau of Great Falls, a non-profit organization which is managed and controlled by a Board of Directors consisting of transportation users located in that city. Also, I hold position of Secretary of the Montana Citizens Freight Rate Association who maintain offices in Great Falls and Helena, Montana.

In order that the two named organizations may keep abreast of all local, state and national transportation matters, we are members of the National Industrial Traffic League, Emergency Rate Committee, Salt Lake City, Utah, National Defense Transportation Association and the Interstate Commerce Practitioners Association. The witness is a registered practitioner.

This witness has been employed where he has participated in phases of transportation, both rail and motor, for the past 30 years and is thoroughly versed in the rate patterns in the trans-continental area and the middle west and is familiar with the complaint and issues in this proceeding.

By Mr. Maguire:

Q. Now, Mr. Ihnet, were you requested by the Complainant in this case to appear as a witness in the first instance, or did you offer to the complainant to appear as a witness in their behalf. Just answer that question first. Which one happened?

A. I voluntarily, or I offered my services to the complainant.

Q. As a witness?

A. As a witness.

[fol. 524] Q. And in what manner did you become acquainted with the general outline of this proceeding?

A. In the general course of my business, in the services that we offer our membership, I am required to naturally keep my pulse on the transportation situations as they occur.

One of the things that I do religiously is to watch formal complaints that are filed before the Interstate Commerce Commission, and if any of them appear to be of interest to Montana, for or against, I attempt to receive copies of the complaint and then make the necessary recommendations to my Executive Committee.

In this case, when the Traffic World announced the filing of the complaint, I secured a copy from the Commission and digested the complaint, and on May 18 I made the recommendation to the Executive Committee that the complaint had merit, that it would provide an additional improved rate program into Montana and that we should support the complainant in the proceedings.

Mr. Torinus: The Executive Committee of what?

The Witness: Executive Committee of the Montana Citizens Freight Rate Association.

By Mr. Maguire:

Q. Will you resume your prepared statement?

A. The Montana Citizens Freight Rate Association is a non-profit group which was organized in June, 1952 for the expressed purpose of policing all interstate and intrastate transportation, rates, rules and regulations affecting the Montana transportation user. To date many [fol. 525] intrastate and interstate informal and formal proceedings have been entered into as direct complaints of petitioners or as intervenors.

The membership of this Association, for whom we are appearing, consists of nine trade and agricultural associations, individuals, commercial and other industrial firms, located in practically every county through which the complainant's facilities are located as well as counties located on other transcontinental lines operating through the state. This membership totals over 20,000 and does not include Chambers of Commerce.

Q. May I interrupt a moment? When you say it does not include Chambers of Commerce, do you mean the membership itself or you have no chambers of commerce in the Association?

A. Well, we have members in the organization, specifically, Chamber of Commerce members, but this particular total that's shown in my statement does not include Chambers of Commerce memberships or Chambers of Commerce as such.

Q. I see, then you don't count each member of the Chamber of Commerce as one of these 20,000, is that right?

A. That's right. All are direct or indirectly affected by transportation prices and if not actual users of transportation services are consumers and are affected by costs of transportation for goods used. Whatever the status of the members and whatever their location, they are entitled to the full benefit of all forms of transportation [fol. 526] subject to the various sections of the Commerce Act.

Montana is an important shipper and consumer state. For the period from June, 1953 to April, 1954, the Montana rail lines reported car loads originated as follows, in Montana:

Commercial Coal	4,384
Dried Beans and Peas	241
Grain and Grain Products and Seeds	59,472
Cement and Plaster	2,859
Refined Oil	28,780
Potatoes	442
Miscellaneous	26,218
Total	395,593

In explaining the asterisk which includes other products of mines and is not reported in total cars shown, I might digress there in saying I selected the miscellaneous and the other commodities shown and the difference between those figures and the grand total, the difference would probably include most of the products of mines and crude oil.

A restricted rate making policy has long been maintained by the SP&S against the complainant which limited the making of through rates and proper routes as well as other charges and practices, such as transit to, from and through State of Montana and other areas.

We claim that economical transportation is not fully available to the members of this Association, nor have [fol. 527] they the full benefit of the transportation facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad, nor can commerce move freely to and from markets when it is retarded by a closed gateway policy.

We further understand the issues to be that because of the restrictions placed on the movement of a long list of commodities, equality of treatment is nil and transportation costs become disproportionately high to the service rendered and the "through routes" cannot be considered as existing since they are not economical and certainly the complaining carrier cannot rightfully Hold Out for such traffic at prohibitive combination rates.

Montana is primarily a raw material producing state. Its principal traffic is grain and grain products, products of mines, products of forests and a limited tonnage in miscellaneous and manufactured articles. Since the "oil boom" petroleum and its products have shown a decided increase to the Montana rail lines.

As to the coal movements, these have materially been reduced due to a rate policy maintained by the Montana carriers and because of competitive commodities such as fuel oils and by-products of petroleum. All of these raw materials as well as finished products must find a market. Only through adequate transportation can the marketing system properly function and by "adequate" we mean that commerce must have arteries or routes over as many mediums as possible.

Certainly the markets of these commodities are not [fol. 528] static and there always must be a pronounced degree of flexibility in the distribution process. Origin or destination communities must not be debarred or restricted by rate limitations, nor by routes without rates of parity.

This witness, at least, does not term a through route as such unless the rate factors through such routes are on the same level or like rates than via the competitive lines. Certainly, there cannot be the proper holding out when a disparity in the transportation cost exists.

We hope the Commission does not require us to show every rate, every commodity and every location that is now under this handicap by these limited provisions which are here challenged. We are here attempting to show that there should not be any different treatment of the patrons who are dependent on the Milwaukee Road than those located on the Northern Pacific or Great Northern Railway Companies.

The Northern Pacific Railway Company parallels the complaining railroad through most of the state and the transportation user who lives on the NP side of the track under the present rate program gets better rate treatment from the SP&S than the shipper located across the river on the Milwaukee. We don't believe the transportation user living on the Milwaukee side should be limited only to livestock, export and import traffic under a through rate and route program with the SP&S. To secure the benefits of a well rounded out rate program the transporta- [fol. 529] tion users in Montana served by the complainant (and the GN Ry. and NP Ry. as well) cannot have a partial gateway to or from a market limited to a handful

of commodities, but must be able to have an "uninterrupted" service which a through rate provides with no greater cost via the Milwaukee Road than via the GN or NP lines.

There is a continuous demand for the high protein wheat produced in Montana and grains shipped from the complainant's area to points on the SP&S are debarred or lose their market attraction because of the lack of through joint rates via Spokane. Certainly, a grain which bears a high combination rate would be not as attractive to a buyer at Astoria. Often times the buyer on the SP&S is paying a greater premium than the eastern markets but again because of these rate Chinese Walls the Montana shipper on the Milwaukee must look to the east for his buyer.

There are many processed items, such as plywood, cedar shingles, sash and door items and other forest products which are not produced in Montana. Any rate and route restrictions existing on these items must be lifted insofar as the receivers located on the Milwaukee are concerned.

This state raises a fairly good crop of seed potatoes as well as table stock. Much of this commodity is raised in the so-called Gallatin Valley which is served by the complainant. Here again, we have an item that must switch from one market to another and any prohibition of reach-[fol. 530] ing buyers located on the SP&S is an uneconomic transportation program and the full benefits of the rail transportation is not available to the shipper. Certainly, such a situation will only tend to encourage the use of the highway competitors and branding the service of the Milwaukee as without quality. From this same area, we find a good crop of dried beans and peas, some seed stock which moves in both directions. These shippers must have a complete line of joint through rates to large western markets.

As we have stated, coal from the Montana mines is subject to serious competition by the oil industry and the Montana lines do enjoy some trade in the State of Washington but not at local points on the defendant's line.

By Mr. Maguire:

Q. Pardon me, that phrase "Montana lines", is that a misprint? Do you mean Montana mines?

A. That's right. That should be corrected. Due to the absence of through joint rates published for the coal mines located on the Milwaukee railroad the shipper is frozen out of the territory local to the SP&S.

What is true as to the outbound movement of raw materials and natural commodities, is likewise true of manufactured goods which may move from Portland and other communities located on the defendant's line. One article we do know has a Montana potential, providing rates were proper since the routes are available, and that is Pumice Aggregate, which is in abundance in Oregon. This witness does not propose to speak for the com- [fol. 531] munities located on the defendant's line, but merely states that from experience, it is just as important to have access to origin as to destination markets through a full measure of joint rates.

Montana is entitled to efficient and economical transportation. We say that the routes presently maintained by the defendants are not adequate because the rate pattern to fit these routes is not competitive. Montana as well as other transportation users on and off the line of the Milwaukee should be privileged to select the transportation agency which in their judgment will render them satisfactory service and with such restrictions the Milwaukee cannot be competitive.

This witness requests this Commission to remove the rate barriers that now face our transportation users and especially when they may be required or desire to use the complainant line, thereby permitting the Montana shippers and receivers of freight to utilize fully the available rail transportation services in Montana.

By Mr. Maguire:

Q. Mr. Ihnet, you speak of the fact that your Association, whom you are representing here as a witness, consists of nine trade and agricultural associations. Could you give us some more detail about them, as to who they are?

A. Well, I will name the principal trade associations and farm groups who are members.

Q. Yes.

A. The Montana Hardware and Implement Association, with approximately 380 members; the Montana Retail [fol. 532] Lumber Dealers Association, with 175 members; Montana Wool Growers Association, with several hundred; Montana Livestock Growers Association, in the thousands; Montana Beekeepers Association, with 75 members; Montana Florist Association with 150; Montana Farm Bureau, with approximately 9000; Montana Farmers Union, with over 14,000; Montana Farm Grange, with 500; and the Montana Liquid Petroleum Gas Dealers, with 150.

Q. Now, do the members of the Montana Farmers Union maintain grain elevators on the Milwaukee and other railways in Montana?

A. Yes, they do.

Q. Do you have available here the list of points where such elevators are located and maintained on the Milwaukee?

A. I have.

Q. Would you give those to us briefly?

A. The Farmers Union, as such, has several functions. It cooperates with grain merchandisers under the Grain Terminal Association of St. Paul and also cooperates with the Farmers Union Central Exchange of South St. Paul, which is a cooperative merchandising agency who have establishments or merchandising units throughout the State of Montana, so when I name the town and the organization, it may be an oil company or it may be an elevator.

At Fairfield, Montana, the Farmers Union Oil Company; at Highwood—

Mr. Torinus: Just a moment, Mr. Ihnet. Will you go a little slower? Fairfield, Montana—what is it?

[fol. 533] The Witness: Farmers Union Oil Company; at Highwood, GTA Elevator; at Geraldine, GTA elevator; at Denton, Farmers Union Elevator; Lewistown, GTA Elevator and Farmers Union Oil Station.

By Mr. Maguire:

Q. Will you remind us again what GTA stands for?

A. Grain Terminal Association.

Mr. Torinus: Lewistown, GTA and what?

The Witness: Farmers Union Oil Station; at Moore, GTA Elevator; at Ryegate, Farmers Union Oil Company; at Miles City, Farmers Union Oil Company; at Terry, Famers Union Oil Company; at Baker, Equity Cooperative Association; Three Forks, GTA Elevator; at Butte, Farmers Union Trading Company; at Livingston, Cooperative Oil Company; at Roy—

Mr. Torinus: Wait a minute.

Mr. Golden: What came after Butte?

The Witness: Livingston.

Mr. Torinus: Cooperative—

The Witness: Oil Company; at Roy, Farmers Union Oil Company; at Hilger, GTA Elevator; at Winnett, the Farmers Union Central Exchange; and at Great Falls, jointly with the Great Northern and Milwaukee, the GTA Elevator, Farmers Union Central Exchange Warehouse, two Farmers Union Oil Stations.

Mr. Torinus: Wait a minute. Farmers Union Central Exchange Warehouse—

The Witness: Two Farmers Union Oil Stations and the [fol. 534] Farmers Union Creamery and the membership in the counties served by the Milwaukee Railroad are as follows:

Teton County, 377 members; Cascade, 1,319; Chouteau, 673; Fergus, 658; Golden Valley, 110; Musselshell, 82; Custer, 138; Prairie, 81; Fallon, 106; Gallatin, 58; Park, 47; Petroleum, 23; a total of 3,667 Farmers Union members located in counties served by the Milwaukee Railroad Company of a total of 14,250 state members.

Q. Mr. Ihnet, do these firm groups have representation on the Board of Directors of the Montana Citizens Freight Rate Association?

A. Yes, sir. The president of the Farm Bureau and the president of the Farmers Union are Directors of the Montana Citizens Freight Rate Association.

Mr. Maguire: You may cross examine.

Mr. Torinus: We would like to reserve cross examination until tomorrow morning, Mr. Examiner.

Exam. Dishman: All right. We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:05 p. m., an adjournment was taken until 9:30 a. m. Tuesday, June 29, 1954.)

* * * * * * *

[fol. 537]

Transcript of Proceedings—June 29, 1954

Exam. Dishman: The hearing will come to order, please.

JOHN G. IHNET resumed the stand:

Exam. Dishman: Are you ready for cross examination, Mr. Rockwood?

Mr. Rockwood: Mr. Torinus.

Mr. Torinus: Were you through on direct, Mr. Maguire?

Mr. Maguire: Yes.

Mr. Torinus: We have no questions of Mr. Ihnet, no cross examination.

Exam. Dishman: No cross examination. Anything more, Mr. Maguire?

Mr. Maguire: Nothing from Mr. Ihnet. Thank you.

Exam. Dishman: You're excused, sir.

(Witness excused.)

Mr. Maguire: We'll call Mr. Dennis O. Selby—S-e-l-b-y.

DENNIS O. SELBY was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is Dennis O. Selby?

A. That's right.

Q. And where do you live, Mr. Selby?

A. In Seattle.

Q. And what is your occupation?

[fol. 538] A. I am Secretary-Treasurer of B. F. Shearer Company.

Q. That's S-h-e-a-r-e-r?

A. That's correct.

Q. And what is the business of the B. F. Shearer Company?

A. We are distributors of school furniture and equipment, theatre equipment, church furniture and equipment, and similar items.

Q. And from what points do you purchase the majority of the equipment which you deal in, and from what company?

A. Most of our equipment furniture comes from the Heywood Wakefield Company at Menominee, Michigan.

Q. And do you deal with or get supplies from other points and other concerns?

A. We do, yes.

Q. Would you name them?

A. We get furniture from Jasper, Indiana, from Chicago and Aurora, Illinois, some from Liberty, North Carolina, Waco, Texas. Those are the principal ones.

Mr. Rockwood: What station in North Carolina?

The Witness: Liberty.

Mr. Rockwood: North Carolina?

The Witness: North Carolina.

By Mr. Maguire:

Q. And to what area do you sell these commodities?

A. Montana, Idaho, Washington, Alaska, California, [fol. 539] Arizona, Nevada, some in the Hawaiian Islands.

Q. I wish you would tell us briefly the general pattern of your business, that is, with respect to frequency or repeating of orders, or from what points, or from what persons, orders may be anticipated, and so forth.

A. Well, we are dealing in school furniture business primarily with School Board Districts throughout the area. The orders come up whenever a new school is built, or an old school is being refurnished. We have salesmen traveling throughout the territory. We never know just when or where we are going to make deliveries, that is, any great period in advance of the actual receipt of the order.

Q. And I will direct your attention to the State of Montana, first, and ask you whether or not you are and have been and expect to in the future deal extensively in the State of Montana in the matter of theatre, school furniture and the other furniture in which you deal?

A. We have been dealing in theatre equipment extensively in Montana for many, many years. The school and church furniture end of our business is just now being developed in Montana, last year. We expect to increase our volume of business substantially in the future in that particular branch.

Q. And do you know generally the territory which is served by the Spokane, Portland & Seattle Railway Company, and by the Oregon Electric, and Oregon Trunk Railways?

[fol. 540] A. I generally know, yes.

Q. And have you in the past done business or made sales at any points on any one of those three railroads?

A. We have.

Q. Can you name some of the points at which you have made sales of your furniture and equipment?

A. We sold equipment in Camas, Rainier, just recently.

Q. That's Camas, Washington, and Rainier, Oregon?

A. That's right, and we have sold equipment in Astoria. We have sold equipment in Kennewick and Pasco. I don't believe they're served exclusively by the SP&S, and other points—I just don't recall.

Q. Have you made sales in the Willamette Valley in Oregon?

A. Quite frequently.

Q. And can you name any of the points in which you have dealt in that territory?

A. Oh, we've sold lots of equipment in Eugene, Albany, Salem, Oregon City, and numerous points throughout the Willamette Valley.

Q. And do you have sales representatives who cover the Willamette Valley?

A. We do.

Q. And what is their practice with regard to getting business for your firm in case there is a theatre, school or church, which is either to be built or to be refurnished? Do [fol. 541] they cover that territory?

A. That's right.

Q. Now, in the nature of your business, do you utilize the privilege of stops for part unloading? In other words, do you deal in part carloads?

A. We do.

Q. Do you do that to any substantial extent?

A. Quite extensive.

Q. And then what is your practice with regard, after you have delivered a part carload—do you ever ship just plain part carloads, or are all your carloads from your wholesalers or suppliers full carloads, as a rule?

A. We try to ship carload lots. However, there are small shipments occasionally that are l.c.l., but the bulk of our furniture from Menominee is carload lots.

Q. That is, they start out from Menominee as carload lots?

A. That's right.

Q. And on those carload lots from Menominee, is your practice that you have just mentioned of dropping off part carloads engaged in in regard to those shipments? Are those the ones you were talking about?

A. We do, whenever possible, combine shipments for various stops where we can and utilize that privilege.

Q. And I will ask you whether or not it would be a convenience to your company and desirable in its interests to [fol. 542] have rates via the Milwaukee Railroad from Menominee, Michigan, to Spokane, and thence to the points on the SP&S? Would that be to your benefit?

A. It would definitely be to our advantage.

Q. In connection with your part lot deliveries, can you explain very briefly why they would be—why such rates would be?

A. Well, we often have shipments into Montana, and there are smaller towns that many times are unable to take a carload shipment. The orders are smaller, and it is to our advantage to route the orders for stopover at these various towns.

Does that answer your question?

Q. Yes. Well, the thing that I'm aiming at is this: Would it be a convenience to you to be able to combine shipments to local points on the Milwaukee in Montana with shipments to points on the SP&S system?

A. It would definitely be to our advantage if we had orders at the same time that would necessitate shipment to those points, which does happen.

Q. And where you do not, at the time a shipment is started out from the factory, have orders, specific orders, which will take an entire carload, or which cannot be routed under joint through rates to all of the points which you wish to serve, what do you do with the balance of the carload, or do you make up a whole carload in those cases? Will you answer that first?

A. We do. We usually do, and the unsold portion would [fol. 543] be placed in our warehouse stock, usually at Seattle.

Q. And then, when that is placed in your warehouse stock, what do you do about payment for the excess which you are just holding in order to make up a car?

A. Well, we have to pay for it and hold it in our inventories.

Q. I see. Are you an expert on rates?

A. Well, I couldn't qualify as an expert.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Your warehouse is at Seattle. Do you have any other warehouses?

A. San Francisco and Los Angeles. We have some storage at Portland, but not very much.

Q. I didn't quite understand.

A. We have some storage at Portland, but most of it is at Seattle in this area.

Q. Your storage at Portland is in leased space with a warehouseman?

A. That's right.

Q. You don't have your own operated warehouse space in Portland?

A. No.

Q. If you started a car from Menominee—that's in Michigan? Not Menomonie, Wisconsin?

A. Michigan.

Q. —Menominee, Michigan, with a portion of the car to [fol. 544] be delivered to a theatre, or a church or school, at some point in Montana served only by the Milwaukee, you could bring the balance of that carload through to Seattle at the carload rate, could you not?

A. That's my—

Q. Via the Milwaukee?

A. That's my understanding.

Q. And the only difficulty that you run into is on the occasion when you have an order at the same time from a School District in Montana, for instance, local to the Milwaukee and, we will say, a School District in Washington or Oregon at a point served only by the SP&S? There you might run into a little difficulty?

A. That's probably correct.

Q. Suppose that you had a carload to sell at a point local to the Milwaukee in Montana, and you wished at the same time to deliver the balance of that car to a point local to the Great Northern in Montana, could you do that on joint through rates?

A. I'm not sure. I don't believe that is correct, and—

Q. Could you bill the balance of the car—

Mr. Maguire: Would you let him answer the rest of the question?

Mr. Rockwood: I thought he had.

The Witness: I said I'm not sure, but I do not believe that that could be handled that way.

By Mr. Rockwood:

Q. Suppose you had a car that you partly unloaded at a [fol. 545] point on the Milwaukee, solely served by the Milwaukee, and wished to unload the balance of the car at a point local to the Northern Pacific in Montana, could you do that on a joint through rate?

A. I don't think so. I'm not sure though. I'm not an expert.

Q. Suppose that you had a car that was destined to a point on the Great Northern in northern Montana, a School District up there, and the balance of the car you wanted to deliver to a point local to the Milwaukee west of Spokane, could you do that?

A. I think so.

Q. Local to the Milwaukee west of Spokane at a joint through rate?

A. I don't know, frankly.

Q. Suppose you had a carload that you wished to partly unload at a point local to the Milwaukee in Montana and the remainder of the shipment you wanted to unload at a point in the Willamette Valley served only by the Southern Pacific, could you move that at a joint through rate?

A. Yes.

Q. How would it move east of the Montana—west of the Montana point?

A. Union Pacific, I believe, and Southern Pacific.

Q. Union Pacific and Southern Pacific. Suppose that you had a carload of furniture—we've been talking about Menominee as an origin point—from Liberty, North Carolina, and you wished to unload a part of that at a [fol. 546] point local to the Milwaukee in southern Montana and take the balance through to unload at a point in the Willamette Valley on the Southern Pacific, served only by the Southern Pacific, could you do that via the Union Pacific and Southern Pacific?

A. I think so.

Q. Are you not familiar with the limitations on the movement on joint through rates via the Union Pacific and the Milwaukee across lake routes to origins and destinations in certain territories?

A. I'm not too familiar with that.

Mr. Maguire: Mr. Rockwood, do you know where Menominee, Michigan, is?

Mr. Rockwood: Menominee, Michigan?

Mr. Maguire: Yes.

Mr. Rockwood: I was talking about Liberty, North Carolina. I changed my points.

The Witness: I'm not sure about Liberty, North Carolina.

By Mr. Rockwood:

Q. And what about Waco, Texas?

A. That would not be possible, I don't believe, on Montana shipments. I'm not familiar.

Q. Well, the fact of the matter is that throughout this western territory there are many situations where you cannot stop to partly unload on one railroad and carry the balance of the load to a destination on some other railroad in the northwest, very many situations where you [fol. 547] can't do that, aren't there?

A. I don't know if there are too many of them because I haven't run into them.

Q. Well, this SP&S situation that you talk about is in no way unique in the Pacific northwest, is it?

A. I can't tell you. As I say, I haven't run into it. Most of our shipments come from Menominee. I'm more familiar with those than I am from Waco or Liberty. I do know that we do have through rates on most of our shipments from Menominee.

Q. Well, whoever arranges your traffic there sees to it that the loads are distributed so that you do get the benefit of those through rates?

A. That's correct.

Q. And that applies on practically all cars you ship? You get through rates?

A. We do, yes.

Q. And you arrange your part unloading so that you will get the benefit of those through rates?

A. As much as we can, sure.

Q. Have you ever lost a sale in the Willamette Valley at points local to the SP&S because of this Milwaukee situation?

A. I don't recall having done so.

Mr. Rockwood: That's all.

Mr. Torinus: I have just one or two questions of Mr. Selby.

By Mr. Torinus:

Q. Mr. Selby, did you ever apply to the North Pacific [fol. 548] Coast Freight Bureau, or to any official of the Spokane, Portland & Seattle Railway, for this routing of which you speak, which would permit you to stop to part unload a car at a point local to the Milwaukee for destination at a point local to the Spokane, Portland & Seattle?

A. I don't recall having done so.

Q. You don't recall ever having made such an application?

A. No.

Q. When was it that you learned of this proceeding, Mr. Selby, first?

A. Well, some six months ago, it was brought to my attention.

Q. How was it brought to your attention?

A. Mr. Tom Shearer first told me about it, who ordinarily directs our traffic, and, subsequent to that, the Milwaukee Railroad talked to me about it.

Q. You spoke to—or, rather, officials of the Milwaukee Railroad spoke to you about this case then subsequent, as I understand it, is that right?

A. That's right.

Q. You're here testifying in this proceeding at the request of the Milwaukee Railroad?

A. That is correct, sir.

Mr. Torinus: I have no further questions.

Mr. Maguire: I have one or—

Exam. Dishman: Mr. Maguire, I believe Mr. Golden has [fol. 549] some questions.

By Mr. Golden:

Q. Do you make any shipments by truck?

A. We do from Texas, from Waco, Texas. We do not from the middle west.

Q. Do you do any distributing by truck?

A. Yes, quite a bit out of our warehouse, where we have our stock shipments. We don't put anything in from the east by truck.

Mr. Golden: That's all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Rockwood asked you, Mr. Selby, whether you managed to make up carloads; or your shippers or suppliers managed to make up carloads in practically all cases, and you said, as I recall, that you were able to do so.

With respect to the carloads which are made up by adding equipment to put into stock in your Seattle warehouse, is that equipment which you put into the Seattle warehouse under orders at the time, or are you holding it in anticipation of possible future orders?

A. Well, that is—sometimes there's orders in the Seattle area. Other times we stock it. It's placed in our stock for future sales.

Q. And you regard it as a benefit or as a burden upon your business, in order to get a carload rate, to be obliged to invest in stock which is—for which you have no immediate [fol. 550] prospect of sale, to hold it in your Seattle warehouse?

A. Well, sometimes it is a disadvantage when we already have a sufficient stock, or are holding sufficient stock on hand.

Q. Now, Mr. Rockwood was asking you some concrete questions about what you could do or would like to do under these part unloading privileges. Could you on a car now moving through to Seattle, we will say, as its final destination by Milwaukee all the way, could you combine in that car shipments, part carload shipments, to Great Falls, which is a common point with the Great Northern and the Milwaukee, and Missoula, which is a common point with the Northern Pacific and the Milwaukee?

A. Could we combine shipments?

Q. Yes.

A. Yes.

Q. Now, then, if you ship out Northern Pacific—take that for an example—could you combine shipments to Missoula, and NP-Milwaukee point, and to Great Falls, a Great Northern-Milwaukee point, if you routed it Northern Pacific?

A. No.

Q. And would that same answer apply as to other points in the State of Montana which are served by the Milwaukee and by only one of the other of the two northern lines?

A. That's right.

Q. Now, you have testified that the proposed through rate to points on the SP&S would be a convenience, and it would [fol. 551] be desirable in your company's business. Do you

expect that the establishment of these rates would cure all of your problems with regard to routing traffic all over the western territory?

A. No, I don't think so.

Mr. Maguire: That's all.

Mr. Rockwood: Just a minute. I don't think we have any more. No further cross examination.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Lutterman: I'll call Mr. Diehl.

GEORGE DIEHL was sworn and testified as follows:

Direct examination.

By Mr. Lutterman:

Q. Will you state your name, please?

A. George Diehl.

Q. Where do you reside, Mr. Diehl?

A. On a ranch just out of Helena, Montana.

Q. You spell your name D-i-e-h-l?

A. That's correct.

Exam. Dishman: Speak up louder.

Mr. Lutterman: We've got a little competition outside here too, so you'll have to speak a little louder.

Mr. Rockwood: I didn't get the gentleman's address.

The Witness: East Helena actually is my post office address. I live on a ranch out of East Helena.

[fol. 552] By Mr. Lutterman:

Q. What is your occupation?

A. Well, I'm a rancher.

Q. And out of Helena, Montana?

A. That's right.

Q. And what do you produce?

A. Wheat and cattle.

Q. Do you have a substantial wheat acreage?

A. We have about 2,000 acres of wheat a year, which we summer fallow which makes it about 4,000 acres.

Q. Do you have any connection with the association known as the Montana Farm Bureau?

A. I'm President of the Montana Farm Bureau.

Q. And will you just state what the Montana Farm Bureau is? That is, what is the nature of the association?

A. Well, it's an association of farmers that have set up an organization to do collectively what they are not able to do individually on legislative matters, or taxes, or freight rates, or anything that affects farmers, and most everything does affect farmers.

Q. It's in the nature of a voluntary cooperative organization, I gather?

A. Altogether voluntary, that's right.

Q. And do you have any members in that organization in areas or counties along the Milwaukee Railroad in Montana?

A. We have organization in about—in 13 counties, of [fol. 553] which the Milwaukee Railroad services.

Q. And can you for the record name those counties? Do you have a list of them?

A. Well, I have a list of them. I don't have them in my mind. Teton County, Chouteau County, Fergus County, Musselshell County, Custer County, Gallatin County, Silver Bow County, Rosebud County, Park County, Wheatland County, and Missoula County.

Q. Do you have a substantial number of members in your organization from those counties, Mr. Diehl?

A. Over 2,000 in those counties.

Q. And do you know whether or not some of those counties are substantial wheat and grain producing areas?

A. Yes, three of them—four of them at least, Teton County, Chouteau County, Wheatland County, Rosebud County has quite an amount too, but those others are really pretty large wheat counties.

Q. Have any of your members, located on the Milwaukee, discussed with you or complained to you about any rate disadvantage they have by virtue of their being located on an exclusive Milwaukee point?

A. Well, that's why I'm down here, because the Board of Directors asked me to come down. The Board of Directors—some of them live in these counties.

Q. And did they state to you the nature of the disad-

vantage, or why they were interested in this—in the first [fol. 554] place, you say your Board of Directors authorized and directed you to appear in this proceeding in behalf or in support of the complainant insofar as wheat rates are concerned out of Montana, is that correct?

A. That's right.

Q. And did they discuss with you or any members the disadvantage which they are under rate-wise, for instance, to Astoria, Oregon?

A. Well, they said that I could ship my wheat from Helena, Montana, cheaper to Astoria, Oregon, than they could ship theirs.

Q. And, incidentally, you ship from a Northern Pacific point, is that correct?

A. Yes.

Q. Personally?

A. I have a spur on the Northern Pacific Railroad. We load the wheat right on the ranch on the Northern Pacific.

Q. So that you personally have no disadvantage, but you're speaking only in behalf of the members who are located at local Milwaukee points, is that correct?

A. That's right. I'm not speaking for myself.

Q. And what is the desire of your organization insofar as equalization of rates from local Milwaukee points to Astoria?

A. Well, they would like to be able to ship their wheat to Astoria, or any place else, as cheap as I ship mine.

Q. And do you know whether or not Astoria is an important grain market?

[fol. 555] A. Well, I don't know how important. It has a mill there, and I suppose that—and there's wheat shipped there, and there would probably be more if these fellows could use the market, so they inform me.

Mr. Lutterman: I believe that's all the questions I have.

Cross examination.

By Mr. Torinus:

Q. Mr. Diehl, has the Farm Bureau, you in particular as President of the Farm Bureau, ever discussed this rate situation with respect to Montana wheat originating on

the Milwaukee with any railroad officer of the Northern Pacific, Great Northern, or SP&S?

A. The Northern Pacific representative—I don't know just what his capacity, Mr. McClain—was at my house a few days ago, and he discussed the rates with me some.

Q. Well, what I'm asking you is whether or not you on behalf of the Montana Farm Bureau, or on behalf of the members of the Bureau, who are located on the Milwaukee, particularly prior to this litigation, have ever made a request for rates on wheat from points on the Milwaukee to destinations on the Spokane, Portland & Seattle, on the same basis as such rates apply from origins on the Great Northern and Northern Pacific?

A. I have not, no, sir.

Q. Have you made any request for those rates upon any railroad official?

[fol. 556] A. No, sir.

Q. When did you first hear of this controversy, Mr. Diehl?

A. About a month ago, I think.

Q. This controversy was brought to your attention by whom?

A. Ferris Stevens, Director from Harlowton, one of the Directors of the Farm Bureau from Harlowton, approached me about it, and, since that time, I've been approached by officials of the Milwaukee and also the Northern Pacific.

Q. Now, has it been your understanding from your discussions of this rate situation with officials of the Milwaukee that it is necessary for the Milwaukee to prevail in this litigation in order for your members who are located on the Milwaukee Railroad to obtain an equality of rates to destinations on the SP&S, particularly Astoria, on the same basis as wheat originating on the Northern Pacific and Great Northern?

Mr. Lutterman: Just a minute, Mr. Examiner. I think the question is ambiguous. He says that it was necessary. Just what he means by necessary—if, for instance, we prevail, I don't think there's any question but what that would result.

I object to the form of the question as to whether or not this is necessary. Apparently it is insofar as any present or pending proceeding is concerned.

Mr. Torinus: I think the question is clear.

Mr. Lutterman: I object to it.

Exam. Dishman: Do you understand the question?

[fol. 557] The Witness: I think I do, but I would like to have it clarified a little bit.

Exam. Dishman: In what respect?

The Witness: Maybe, if he would ask it over, maybe I could get it.

Mr. Torinus: Could I have the Reporter read the question, please?

(Question read.)

The Witness: No, I don't—I think I'd have to answer that question, no. I would have to answer that question that my members think that this hearing—I don't know why I was sent down here—but they thought coming out of this hearing would give them the same freight rate to Astoria as I am now getting on the Northern Pacific. I think that was their idea in sending me down here.

I don't think the Milwaukee has ever told me that they had to win this lawsuit or this hearing in order to do that.

By Mr. Torinus:

Q. As a matter of fact, if the SP&S were willing to join with the Milwaukee on the same basis of rates as now apply from Great Northern and Northern Pacific points, and if the Milwaukee were agreeable to publishing the same rates from Milwaukee origin points on the same basis of rates from Milwaukee origin points to Astoria, for example, as now apply from the Great Northern and Northern Pacific, that would solve the difficulty of which your members complain, isn't that right?

[fol. 558] A. I think that's right.

Mr. Torinus: I have no further questions.

By Mr. Golden:

Q. Mr. Diehl, what are the principal wheat marketing points in the northwest?

A. Montana wheat moves both ways, and, of course, with the high protein quality wheat, a lot of it comes to the west coast.

Q. Name some points on the west coast.

A. Spokane—mostly our wheat is billed from Montana to Spokane and diversion. Where it goes from there, we aren't always sure.

Q. What are the milling points?

A. Well, I'm not too sure. I think—

Q. When you sell your wheat, do you sell it on track?

A. On track, that's right. I could tell you that a lot of my wheat goes to Cheney, Washington. So, they have some mills there, the National Biscuit Company, at Cheney, Washington. I have sold them lots of wheat from my farm.

Mr. Torinus: That's on the Northern Pacific?

The Witness: Yes.

By Mr. Golden:

Q. How many cars though in 1953 did you have that went to Astoria?

A. In 1953, my wheat was hailed out. I didn't have any wheat.

Mr. Lutterman: That was bad for you and the NP then, wasn't it?

The Witness: That's right. It was bad for both of us.

[fol. 559] By Mr. Golden:

Q. How about 1952?

A. I think we had 14 cars, and I believe 10 of those cars went to Cheney.

Q. In other words, you don't know how many went to Astoria, if any?

A. No, I don't know. I don't know whether any of it did.

Mr. Golden: That's all I have.

Redirect examination.

By Mr. Lutterman:

Q. To make it clear, you're not complaining about your own personal rate situation, but you are complaining on behalf of the members who don't have the same advantage you do, isn't that correct?

A. That's correct.

Mr. Lutterman: That's all. Thank you.

The Witness: I have no fight with anybody.

Mr. Lutterman: Thank you, Mr. Diehl.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Lutterman: We'll call Mr. Neve.

Norman L. Neve was sworn and testified as follows:

Direct examination.

By Mr. Lutterman:

Q. Will you please state your name and spell your last name?

A. Norman L. Neve—N-e-v-e.

[fol. 560] Q. Where do you live, Mr. Neve?

A. In Seattle, Washington.

Q. What business are you in?

A. Wholesale lumber.

Q. What firm, or what company?

A. McIntosh & Truman, Incorporated.

Q. And what is your connection with that company?

A. Well, I am Treasurer, also the carload buyer.

Q. Do you maintain offices where?

A. Well, our office is in Seattle. However, we are buyers for March & Truman Lumber Company of Chicago.

Q. I understand you to say that you're wholesale buyers of lumber, is that correct?

A. That's correct.

Q. And who are the principal customers, for instance, for your Seattle office?

A. General contractors, heavy contractors.

Q. And in what areas do these contractors operate?

A. Well, nationally. We ourselves just sell up to about the center of—oh, North and South Dakota, Kansas, Nebraska, and Oklahoma, and there on east to Chicago.

Q. And what—at what points have and do your contractors work? That is, in what States? West, for instance, of the east Dakota borders.

A. Well, I'd say in that territory everything but Cali- [fol. 561] fornia where we sell. As far as this hearing though, I believe North and South Dakota and Montana are the principal points.

Q. And do you know generally the type of work that your contractors are engaged in? That is, what type of construction?

A. Well, we sell for everything except house building, is about the only thing; schools, churches, and super markets are the big thing right now.

Q. And, of course, your contractors, that is, their operations are not located at one point? They operate at various points, wherever they get a construction job, is that correct?

A. That's right; wherever there is some work to do, they go there.

Q. And in areas where there is a growth, population-wise, and business-wise, and industry-wise, has it been your experience that your contractors normally have some operations in that area?

A. Well, that would about cover it, wherever anything is being done right now. Every town is building a church or something like that is going on. One thing is quite noticeable as far as we're concerned is that the western Montana area—excuse me—that's eastern Montana area is really going quite good, and also the dam construction down in South Dakota seems to have brought quite a bit of construction work.

Q. And you are aware of the fact then that there has been a considerable growth in, for example, eastern Mon-

[fol. 562] tana, increased construction activities, as well as in the Dakotas?

A. Yes.

Q. And you have had contractors to whom you sell lumber operating in Montana and in the Dakotas, is that correct?

A. That's right.

Q. Now, I assume—well, I'll ask you so that I shan't be guilty of leading: What type of sales do you make, that is, to your contractors? Are they what we generally refer to as a firm sale?

A. Yes, we sell everything before we buy it. We don't put any rollers out, as they call them, or anything like that. Ours are—we sell a specific job and then go out and buy lumber.

Q. And in connection with filling orders from such contractors, do you have to furnish a specified type of lumber, or just random lengths, or what?

A. Well, a 2 by 4 is a 2 by 4, but all of our sales are specified widths and lengths, pieces, and everything else. They are what the contractor wants for that specific job, and he specifies just about every item that he buys.

Q. So that your sales are not just random carloads of lumber? They are lumber that's been specified of various types by your contractor purchaser, is that correct?

A. That's right.

Q. Where are your sources of supply?

A. Well, Oregon and Washington principally.

[fol. 563] Q. And do you buy a considerable amount of lumber in Oregon—in western Oregon?

A. Most of our lumber comes from Oregon, yes.

Q. Western Oregon?

A. That's right.

Q. And do you buy from mills who are located on the SP&S Railroad or one of its branches, the Oregon Electric or the Oregon Trunk?

A. Yes, quite a bit.

Q. And can you name us some points from which you do buy?

A. Well, Wauna, Oregon, is one; Santiam, Lebanon, Eugene—

Mr. Rockwood: Wait a minute. Take it easy. Wauna—

The Witness: Wauna, Oregon, Santiam—Sweet Home, excuse me, Lebanon, Eugene; just about every point where there's a mill on the SP&S we have tried.

By Mr. Lutterman:

Q. In that connection, where you are required to furnish lumber to the contractors' specifications, is there somewhat of a problem in finding a market—that is, where you can purchase such specified types and widths and lengths of lumber?

A. Well, yes. Not every mill will ship everything the way we specify. There are just certain mills that will go to the detail work our orders call for.

Q. And particularly with respect to the mill you spoke of on the so-called Santiam branch of the SP&S, or the [fol. 564] Oregon Electric rather, is that an important source of supply to you?

A. The Santiam Lumber Company is, yes. They kiln dry, and kiln dried lumber is rather important to us.

Q. By the way, approximately how many cars does your Seattle office originate, just roughly?

A. Oh, It's hard to say. I'd roughly say around 500 a year, we hope.

Q. Showing you my copy of what has been introduced in evidence here, or at least it's been identified for the record, as Exhibit No. 9: In the first place, you've seen this map, is that correct?

A. That's correct.

Q. And in general, are you familiar with the rate situation insofar as origins on the SP&S system to destinations on the Milwaukee, local points on the Milwaukee? Let's take west of Mobridge, South Dakota. That is, just in a general way?

A. Well, west of Mobridge—well, let us say, when I get an order west of Mobridge on the Milwaukee line, I watch out. I know the rate is higher at quite a few points, and that's why I have to go into it pretty carefully.

Q. And you're not a rate or traffic expert, I take it, Mr. Neve?

A. No.

Q. But you do know that rates from SP&S system origins, from which you buy, to destinations served only by the Milwaukee west of Mobridge are higher than the going through rates?

[fol. 565] A. That's correct, yes.

Q. And I will ask you whether or not the area shown on this map, Exhibit No. 9, let's take west of Mobridge, South Dakota, and, along the lines of the Milwaukee Railroad, as shown on that map, are important areas to you?

A. Well, the last couple years they have been. If they have good crops back there and keep on getting good wheat crops, and so on, I hope it will continue to be good. So far, it has really been developing for us yet.

Q. And that area is an important market to you then, is that correct?

A. That's correct.

Q. And particularly with respect, for instance, to your sources of supply, such as the Santiam mill, which you mentioned, is it important or you might say almost necessary in your type of business that you have a more or less open source of supply insofar as trying to put together a specified carload of lumber in order to reach almost any destination where your contractor may be working?

A. That's right.

Exam. Dishman: A little louder, please.

The Witness: All right.

By Mr. Lutterman:

Q. It would then be advantageous, if not almost necessary, for you to have joint through rates from SP&S system origins to all local points on the Milwaukee Rail-

[fol. 566] road, let's take west of Mobridge?

A. Yes, it would.

Q. And the present rate is substantially higher than the joint through rate, for instance, which would be applicable via the NP or GN, is that correct?

A. That's right.

Q. And will you state whether or not it reaches the point where it is almost prohibitive of furnishing a car

from SP&S origins to local points on the Milwaukee west of Mobridge?

A. Well, yes, it has hurt us on several cases. It can run five or six dollars a thousand board feet higher, and that's likely to throw us out completely.

Q. Throw you out of the market?

A. That's right.

Mr. Lutterman: I think that's all the questions I have.

Cross examination.

By Mr. Rockwood:

Q. Do you buy from mills south of Eugene on the Southern Pacific?

A. Yes.

Q. Of that stations which you enumerated, I realize it's probable not an inclusive list, but Lebanon and Eugene in the Willamette Valley are likewise served by the Southern Pacific, and from those stations you can now get over to Montana local points via the Union Pacific to Marengo, Washington, and thence Milwaukee to your local points in [fol. 567] eastern Montana on the joint through rate, can you not?

A. That's right. It's just for this one thing: The car shortages down here seem to crop up every once in a while, and the SP&S seems to be in better shape at times than the SP. In those cases, it helps to be on the SP&S.

Q. We appreciate the compliment. Sweet Home, of course, is on the Santiam branch served only by the Oregon Electric?

A. Yes.

Q. Wauna, that you mentioned, is on the Astoria branch of the SP&S served only by the SP&S?

A. Yes.

Q. Santiam Lumber Company, that you speak of, is at Sweet Home, is it not?

A. Yes.

Q. Served only by the Oregon Electric?

A. I believe so.

Q. You, of course, do not know the long, long history

of these lumber rates off the SP&S, which date back many years? You've never heard any of that history?

A. No, I don't know anything about it.

Q. You don't know what carriers primarily are responsible for the rate situation as it exists today, do you?

A. No, I don't. I haven't the slightest idea.

Q. If the rates from all SP&S points, including the Santiam branch, were made applicable under joint through [fol. 568] rates with the Milwaukee to all points on the Milwaukee west of Mobridge, South Dakota, your situation would be taken care of, wouldn't it?

A. I believe so, yes.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Lutterman:

Q. One other question: You do also have a market east of Mobridge, is that right?

A. Yes, that's correct.

Q. And to the extent that there would be any restrictions as to any points east of Mobridge, would that adversely affect you? That is, any disadvantage over the Milwaukee routing, SP&S, Spokane, Milwaukee.

Mr. Torinus: I'll object to that question. What type of restrictions, Mr. Lutterman?

Mr. Lutterman: Either with respect to transit, lack of a through joint rate, to certain destinations on the Milwaukee.

Mr. Rockwood: Just a minute. With respect to transit, I object to it because this witness does not use transit.

Mr. Lutterman: Wait a minute.

Exam. Dishman: Well, let the witness state. Do you use transit?

The Witness: No, with the exception of, I'd say, four or five carloads of plywood a year, which would amount to practically nothing anyway.

Exam. Dishman: Do you understand the question?

[fol. 569] The Witness: I believe so. I'm not sure.

By Mr. Lutterman:

Q. Let me ask: Would the privilege of diversion be of importance to you?

A. No, I don't think so.

Exam. Dishman: Diversion or transit?

The Witness: No, with the exception of a very, very few cars a year, I say, it isn't too important.

By Mr. Lutterman:

Q. I assume—I think you started to mention something of it—you do have occasion, do you, to partially—to stop cars for partial loading or to finish loading en route?

Mr. Rockwood: Just a minute. There's no such testimony to that effect.

Mr. Lutterman: I'll ask him then whether he does.

Mr. Golden: It's improper redirect.

Exam. Dishman: Well, let the witness answer. Do you do that?

The Witness: I don't know. I got lost.

Exam. Dishman: He wanted to know if you stopped cars to partially unload.

By Mr. Lutterman:

Q. To unload or load, both?

A. We do both. We load in transit and unload in transit.

Q. So that, to the extent that you do use the right to stop a car to partially load or to finish load, or to partially unload, you do use the transit privilege for that purpose?

[fol. 570] A. That's correct, yes.

Q. And if that privilege were available to you, for instance, on cars originating on the SP&S system, with the right to stop to finish load at a local point on the Milwaukee, might that be of some value to you?

A. It would, I am quite sure.

Mr. Lutterman: That's all. Thank you.

Recross examination.

By Mr. Rockwood:

Q. Do you know whether or not that privilege is now available via the Milwaukee to that yellow territory on the map?

A. I am not sure, no. I do know—this is rather hazy, but I believe we had one to St. Mary's, Washington, a while ago to complete loading, and there was something wrong with it. I believe that we couldn't make a stop-off in transit. It was somewhere on this map in the green territory. It was a little west of Mobridge. I'm not sure.

Q. If you had bought that car on the Southern Pacific, you could have stopped at St. Mary's?

A. I believe so, yes. I'm not sure.

Q. How many cars out of the 500 that you ship each year, do you stop to partially load or unload?

A. Well, it's very hard to say because our business changes quite a bit as to what we're working on at the time, but right now we're doing considerable amount of it [fol. 571] because the kiln drying mills are down with a strike, and, therefore, we're stopping quite a few for Ponderosa pine east of the mountains, but I would say roughly five per cent are stop-off cars.

Q. Yes. Well, the present situation is abnormal because of the strike in the fir industry?

A. This particular part of it, yes, but there seems to be an awful lot of it going on all the time.

Q. Times are always abnormal?

A. They're not level. Let's put it that way.

Q. You ship from Sweet Home, from the Santiam Lumber Company?

A. Yes.

Q. I thought it was inherent in one of Mr. Lutterman's questions to you—

Mr. Lutterman: A what?

Mr. Rockwood: Inherent in one of your questions put to him.

Mr. Lutterman: I get it. I didn't hear the word.

By Mr. Rockwood:

Q. — some limitation with respect to rates off the Santiam branch of the Oregon Electric. You are aware of the fact that at the present time that such joint rates, as there are between the SP&S, or the Oregon Electric and the Milwaukee, do not apply from the Santiam branch? Are you aware of that fact?

A. Mm-hmm.

Q. If the rates from the Santiam branch were modified to put them on the same basis with the rates from Eugene, [fol. 572] that would take care of the situation on the Santiam, would it not?

A. On the Santiam branch, I guess it would.

Mr. Lutterman: Wait a minute. I don't think, Counsel, he understands your question. The rates from Eugene, you mean via the Southern Pacific, Union Pacific?

Mr. Rockwood: No; the rates published by the Oregon Electric from Eugene via the Milwaukee.

Mr. Lutterman: To Spokane?

Mr. Rockwood: Yes.

Mr. Lutterman: Well, there are no such rates if your question is directed to west of Mobridge. There are no such rates from any point on the SP&S.

Mr. Rockwood: He's already said that the situation would be corrected if the rates west of Mobridge were put on the same basis as the rates east, and he testified that he did not know who was responsible for the situation as it now exists; what carrier, and if that were taken care of, his situation would be substantially taken care of now. I am talking about the Santiam.

If the Santiam branch were likewise put on that same basis, as rates from Eugene, Albany, and other points served by the SP&S in the Willamette Valley, I take it that he would be taken care of.

Exam. Dishman: Is that your understanding of the situation?

The Witness: Well, I think it is...What I would like to do is to have the freedom just to originate a car on the [fol. 573] SPS with the same rights and privileges, we'll say, of the SP. That's what I tried to indicate in my answers. I'm not sure if I did.

By Mr. Rockwood:

Q. You live in Seattle?

A. That's correct.

Q. Do you buy lumber from mills on the Milwaukee, solely served by the Milwaukee, in the State of Washington?

A. Quite a bit.

Q. And you have restrictions as to the markets in which you can sell lumber on a through rate from mills on the Milwaukee in Washington, do you not?

A. In selling in Washington, originating in Washington, or how?

Q. No; selling your lumber originating at mills on the Milwaukee?

A. Oh, definitely.

Q. That is, you can't sell in this territory in eastern Montana served by the Great Northern and Northern Pacific—

A. Mm-hmm.

Q. —that's true—

Mr. Lutterman: Wait a minute.

Mr. Rockwood: He "mm-hmmed". I think the Reporter got it.

The Witness: We do have trouble in the same territory on the GN and NP on the Milwaukee on the peninsula, which is one mill, and that is all we have.

By Mr. Rockwood:

Q. Only one mill which you deal with?

A. That's right.

[fol. 574] Mr. Rockwood: That's all.

Redirect examination.

By Mr. Lutterman:

Q. As a matter of fact, you know that you do have the rates from local Milwaukee origins to destinations, that is, a joint through rate to destinations on either the NP or the GN in Montana, isn't that correct?

A. I believe so. I've never run into anything where we couldn't do it. I can't on my own knowledge say yes or no. I know we've never had much difficulty.

Mr. Lutterman: That's all. Thank you.
Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Merrill: I'll call Mr. Jaynes.

A. J. JAYNES was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name, please?
A. A. J. Jaynes—J-a-y-n-e-s.
Q. What is your address?
A. Sioux City, Iowa.
Q. And your occupation?
A. I am Vice President of the Haley-Neeley Company, who are wholesale fresh fruit and vegetable jobbers.
Q. As Vice President, what is the nature of your duties?
A. I have charge of the accounting, the purchasing, and [fol. 575] the selling of the commodities which we handle.
Q. And what business does Haley-Neeley engage in?
A. Haley-Neeley Company are wholesale fresh fruit and vegetable jobbers, selling fresh fruits and vegetables to the retail merchants in our surrounding territory.
Q. What is the location of your business?
A. We have one branch, and the main office at Sioux City, Iowa, which is one distribution point. We have another distribution point located at Mitchell, South Dakota.
Q. On what railroad are your distribution warehouses and facilities located?
A. The distribution point of Sioux City, Iowa, is located on the Milwaukee Railroad, and the distribution point at Mitchell, South Dakota, is located on the Milwaukee Railroad.

Q. Now, those facilities are not served directly by any other railroad, is that correct?

A. Those points are not, either one of them, serviced by any other railroad directly, other than the Milwaukee.

Q. Is Mitchell located on any railroad other than the Milwaukee?

A. Mitchell, South Dakota, is—has the Milwaukee Railroad Company and a branch of the Northwestern system, which services the city of Mitchell.

Q. And at Sioux City, what other railroads serve?

A. At Sioux City, Iowa, the Northwestern system, the Illinois Central, the Burlington Railroad, and the Mil-
[fol. 576] waukee Railroad Company service Sioux City, Iowa.

Q. What are the sources of your supply of fresh fruits and vegetables?

A. We obtain fresh fruits and vegetables from all over the United States, from the Pacific Coast, the Pacific northwest, which includes Idaho, Oregon and Washington, California in the southern part of the Pacific Coast region. Southwest, we get merchandise out of Arizona, Texas, Louisiana. We import, as well as other merchandise from Louisiana, out through the gateway at New Orleans.

From the southeastern section of the country, we obtain merchandise out of Florida, Alabama, Georgia, and then the eastern coast as far as Maine, and other points east of Chicago.

Q. And what is your marketing area?

A. Our products, which we purchase, are marketed within a radius of 100 miles of each point of distribution.

Q. What form of transportation do you use to distribute to that area?

A. All of our merchandise, practically all of our merchandise is distributed from these two points by motor vehicle carrier.

Q. Approximately how many carloads a year do you bring in to Sioux City and Mitchell from all origins?

A. We handle between 600 and 800 cars of merchandise per year. That's all types.

Q. And from the Pacific northwest territory, approxi-
[fol. 577] mately how many cars a year do you bring in?

A. We handle approximately 100 cars out of the Pacific northwest each year.

Q. What is the situation with respect to the number of cars which you find it necessary to reject?

A. We reject an average of one car a week or more because of either condition of quality upon arrival, or it does not meet with our satisfaction on inspection.

Q. Does Haley-Neeley have any interest in the disposition of such car after it's rejected?

A. The Haley-Neeley Company does not have any direct interest in the disposition. We do have an indirect interest in this way: Merchandise which is coming in or shipped to us, if we reject it, it must be resold, and we must maintain a workable and good feeling with the people who supply us, and the people through whom we buy.

Q. Do you have any interest then in having a wide territory in which such a car can be disposed of?

A. It is necessary in our line of business that we do have a wide territory and certain markets to which merchandise, which is rejected, can be shipped. As an example, merchandise coming in to either one of our points and being rejected by us must go into markets that can use or absorb those commodities which we reject.

Q. Now, if there is a restriction on that territory in which [fol. 578] those cars can be disposed of, has that had any effect upon your ability to reach certain sources of supply?

A. It is very definitely the case. If we are unable to obtain merchandise from any territory and then, if in case it is rejected, refuse it, if it cannot be reconsigned to points beyond in the general line of movement, those cars are not offered to us, or refused to be shipped to us for our purchase.

Q. Do you have routes with joint through rates available to you from points on the SP&S Railroad via the SP&S to Spokane, and thence the Milwaukee to Mitchell or Sioux City?

A. We do not have.

Q. Do you have routes available from points on the SP&S which are also served by the Southern Pacific or Union Pacific, by which a car could move to Marengo,

Washington, and thence the Milwaukee road to destination?

A. Yes.

Q. Would the use of such a route eliminate the reconsignment problem for rejected cars which you have just spoken about?

A. Would you ask that question again?

Q. Would the use of the route, such as the Union Pacific or Southern Pacific via Marengo, thence the Milwaukee Railroad to Mitchell or Sioux City, eliminate that reconsignment problem?

A. It would not entirely eliminate it. Once we get the merchandise into our Mitchell, South Dakota, branch, it would then be at a dead end.

[fol. 579] Now, we're speaking of the route which comes through—from Spokane, through North Dakota, South Dakota, Aberdeen, thence south to Mitchell, or then on to Sioux City?

A. That is right.

Q. And what is the fact as to whether a car coming via that route could be reconsigned to all portions of the country in case it should be rejected by you without penalty?

A. Moving via the SP, Northern Pacific, into Mitchell or Sioux City, Iowa, coming that way, the majority—

Q. Just a minute, Mr. Jaynes. To get the question straight, we will assume a car originating on the SP, the Southern Pacific Railroad, which moves via the Southern Pacific, thence the Union Pacific to Marengo, Washington, thence the Milwaukee Railroad to Mitchell or Sioux City.

Would you have an unrestricted territory in which you could dispose of a rejected car from either Sioux City or Mitchell?

A. No, we wouldn't. We would not have territory to which we could ship this merchandise east of a line from Omaha to Chicago, Des Moines, or into northern Ohio.

Q. Did you mean east or south of such line?

A. South. I beg your pardon.

Q. All right, and what about Chicago itself, Mr. Jaynes?

A. We would be unable to ship into Chicago.

Q. And to territory east of Chicago, what would the situation be?

[fol. 580] A. We would be unable to ship into the territory east of Chicago north of the Ohio.

Q. Now, would that be north of the Ohio River, or south of the Ohio River, from which you would be barred from reconsigning to?

A. I believe—offhand, I'm not able to answer that without checking it more.

Q. What about across lake routes east of Chicago, you have that, have you not, to the northeastern section?

A. Yes.

Q. And it would be the territory south of the Ohio River that you could not reach by reconsignment, is that correct?

A. You're right.

Q. Have you any—well, let's take another possibility. Would you have routes available via the Union Pacific to Omaha, and thence north to Sioux City or Mitchell?

A. We have routes available via Union Pacific to Sioux City and north to Mitchell, but, in case of rejection, we would still be up against the same problem of reconsigning east of the line just mentioned before.

Q. And that would be true of the shipments at Mitchell, arriving at Mitchell, South Dakota?

A. Yes, that's right.

Q. All right, sir. Have you any interest in obtaining commodities which are produced in the area served by the [fol. 581] Spokane, Portland, & Seattle Railway, and its subsidiaries?

A. Yes, we very definitely have. The area of the northwest Pacific is one of the better areas for the procurement of our apples and potatoes and cherries, and what we call soft fruit items.

Q. Have you had any difficulty in recent years in obtaining any such commodities?

A. Yes. There have been times when we have been unable to obtain out of certain districts enough of some commodity, as an example, potatoes, sometimes onions, with which to supply our local trade.

Q. And that is true of cherries, as well?

A. That is true of cherries, as well.

Q. What is a roller car, Mr. Jaynes?

A. A roller car is a car of merchandise loaded by a shipper. The shipper may be either a broker shipper or a direct shipper, heading for some certain destination point via a certain line specified of movement, and those rollers then are sold or tried to be disposed of by the shipper in transit.

Q. Is a roller car similar to what they call a transit car in the lumber industry?

A. I would say yes. We purchase them, what we call, in transit. That's what the term is known as. We purchase them in transit.

Q. Have you ever purchased such cars on behalf of your company?

A. Numerous cars.

[fol. 582] Q. With respect to the fruits and vegetables which you buy originating from western points, where do you usually obtain or purchase such roller cars?

A. The majority of the cars are purchased at the Omaha —what we call the Omaha gateway, and some out of the Kansas City gateway.

Q. Have you ever purchased any which may have been rolling to Minneapolis from the Pacific northwest?

A. A few.

Q. Have you ever purchased a car which was rolling on the Milwaukee Road from the Pacific northwest?

A. We have not.

Q. Do you know why you have never done so?

A. For two reasons: One, brokers do not offer us cars originating out of certain points due to routing restrictions, and, No. 2, the merchandise which—will you repeat that question?

Q. Why have you not purchased any car rolling on the Milwaukee Road from the Pacific northwest?

A. Number 2, there haven't been any rollers offered to us.

Q. Do you have any interest in reducing the time on route of shipments of fresh fruits and vegetables?

A. All fresh fruit and vegetable jobbers are interested in getting the products that they sell to the market as soon as they can after they are picked. It's very expedient that we receive the merchandise as soon as we can. When the [fol. 583] market declines, it definitely has something to

do with our market operation due to deterioration in transit, and, No. 3, we have the facilities of refrigeration which must be paid for, either by ourselves or the shipper. The faster the shipment moves and arrives at our point of distribution, the quicker we can dispose of it in case of a market decline and get back onto the market.

If it is a case of refrigeration, the less time spent in transit, the smaller would be the refrigeration charges; the less would be the cost of the commodity, and the other time of—

Q. Deterioration?

A. Deterioration. Every time a product in our line, every day it is being late delivered to the merchant in good merchantable order means a loss to someone along the line in the way of quality merchandise.

Q. Now, do you presently have joint through rates presently available to you from Spokane, Portland & Seattle Railway points to Spokane, thence via the Northern Pacific to Oaks, thence to the Chicago & Northwestern to Mitchell and Sioux City?

A. The rates, yes, we do have.

Q. Is there any disadvantage to your use of that service?

A. The disadvantage to that route, our service is still the fact that we cannot reconsign them in case of rejection to points beyond.

Q. Is it a question of reconsignment, or, rather, a question of time en route, Mr. Jaynes, that is a disadvantage? [fol. 584] A. We have two; as to which is predominant, one, reconsignment is one problem which we must have, and the other is the question of time elapsing between the time it is shipped and arrives at the point of destination. They both are very—

Q. What service is available from Oaks southward to Mitchell and Sioux City via the Northwestern?

A. We have tri-weekly service from the Northern Pacific points to the point Aberdeen, South Dakota, where we pick up our cars and ship them to Mitchell or Sioux City via the Milwaukee.

Q. Does the tri-weekly service result in delays at times to your shipments?

A. Yes, from one to two days, depending upon the time that the car arrives into a point on the Northern Pacific, is picked up and delivered to Mitchell and a connection which it makes at—I beg your pardon—at Aberdeen, and the connection which it makes at Aberdeen.

Q. Do you also have joint through rates available from SP&S points to Spokane, thence the Great Northern Railroad, to Wilmer, and back to Aberdeen, and thence the Milwaukee Railroad to Mitchell and Sioux City?

A. Those rates are available. They are circuitous rates, or out-of-line haul, but they are available.

Q. And does the use of that particular route also entail delay to your shipments?

A. It entails delay to our shipments from one to two days [fol. 585] in addition to the forwarding in case of rejection.

Q. Do you also have a route available at joint through rates from Spokane, Portland & Seattle Railway points to Spokane, thence the Great Northern or the Northern Pacific to the Twin Cities, and then via the Northwestern or Milwaukee to Mitchell and Sioux City?

A. Yes.

Mr. Torinus: Now, just a minute. I would like to have that question clarified. You talked about rates to Mitchell and Sioux City. Do you mean to Mitchell, thence Sioux City, via Mitchell? Is that what you're speaking of, Mr. Merrill?

Mr. Merrill: Well, I stated Mitchell or Sioux City, Mr. Torinus. It doesn't matter.

Mr. Torinus: Well, let's have the question clarified so we will know what the witness is answering.

By Mr. Merrill:

Q. Do you understand the question, Mr. Witness?

A. The question is: Do we have available rates either to Mitchell or Sioux City? We do.

Q. And those rates would apply from points on the SP&S to Spokane, thence the Great Northern or the Northern Pacific to Minneapolis, thence from Minneapolis to Mitchell, via the Milwaukee or the Northwestern, or from Minne-

apolis to Sioux City via the Milwaukee or Northwestern, is that correct?

A. Yes.

Mr. Merrill: Does that clear it up?

[fol. 586] Mr. Torinus: That particular answer, sir, to that question. There were some earlier questions where you referred to routes via Mitchell and Sioux City, and I don't understand—

Mr. Merrill: I think we can develop that here, Mr. Torinus. I expect to get to it, the advantages of using the Milwaukee Railroad over these other routes.

Mr. Torinus: Well, you talked about service, and I didn't know whether you were talking about service via the Great Northern to Sioux City through Mitchell, or service direct to Sioux City via the Great Northern. Do you want to clear that up, Mr. Merrill?

Mr. Merrill: I think that will be cleared up before we're through.

By Mr. Merrill:

Q. Is there any advantage to you, Mr. Jaynes, in the use of service of the Milwaukee Road from Aberdeen, South Dakota, a point on the main line of the Milwaukee Road, down to Mitchell or to Sioux City?

A. Yes, there is. Out of Aberdeen, our merchandise, being perishable, is put on the passenger train, and we get passenger train service out of Aberdeen.

Q. And is there a route from Aberdeen south to Mitchell and thence on to Sioux City?

A. There is a direct—

Q. A direct route?

A. A direct line route, yes.

[fol. 587] Q. And do you have occasion to take advantage of that direct route in connection with shipments which are destined partly to Mitchell and partly to Sioux City?

A. Yes, we do.

Q. And what is your practice with respect to inspection of your shipments at either point?

A. Any shipments that arrive at Mitchell or Sioux City are inspected at those points for acceptance or rejection.

Mr. Merrill: That's all, sir.

Exam. Dishman: Does that conclude the direct?

Mr. Merrill: Yes, sir.

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please. Were you through on direct, Mr. Merrill?

Mr. Merrill: I'd like to ask two or three more questions, and then I'll be through.

Exam. Dishman: All right.

By Mr. Merrill:

Q. Do you have any interest in the privilege of diverting cars for resale beyond the local territory served by you in the Mitchell and Sioux City area?

A. Yes, we do.

Q. At the present time, on fruits and vegetables from the Pacific northwest, which might move line haul via the Milwaukee Road from Spokane, do you have the privilege [fol. 588] of diverting to an unrestricted territory without penalty?

A. Originating on what lines?

Q. On the Spokane, Portland & Seattle Railway?

A. No, we do not.

Q. In general, is that the same territory in which you would be excluded from reconsigning a rejected car?

A. Yes.

Q. Now, with respect to cars which might move via the Great Northern or Northern Pacific Railroad into the Twin Cities and thence back to Mitchell or Sioux City, from origins on the Spokane, Portland & Seattle Railway, is it possible for you to reach any of this restricted territory which we have spoken of south of the Ohio River, Chicago, or south of the Milwaukee Road's main line from Chicago to Omaha?

A. No, it is not.

Q. On such occasions, when you want to divert or reject a car, can you reconsign a rejected car?

A. No. When we want to reconsign a rejected car, we can't.

Mr. Merrill: That's all, sir.

Cross examination.

By Mr. Torinus:

Q. Mr. Jaynes, I think you said that you purchased 600 cars a year, of which 100 were from the Pacific northwest?

A. Yes.

Q. Can you tell us how many of those 100 cars, that you [fol. 589] purchase from the Pacific Northwest, are consigned to Sioux City, and how many to Mitchell?

A. That I cannot. I do not have my records with me.

Q. All right, can you give us an approximation?

A. I would hate to tell you exactly. Some of them are made Mitchell with Sioux City destination; some were Sioux City, Mitchell destination. So, I can't give you an exact opinion.

Q. Can you give us an approximation of how many cars were consigned direct to Sioux City? What proportion?

A. No, I cannot.

Q. Well, would it be 25 per cent, 50 per cent, 75 per cent?

A. That come to Sioux City direct and not go on to Mitchell, or reconsigned to Mitchell? Is that what your question is?

Q. My question is: What proportion of your cars were consigned to Sioux City direct that did not either stop en route at Mitchell, or did not go beyond to Mitchell?

A. It would only be an estimation or approximation on my part, and I would say 20 per cent.

Q. Now, what percentage of your cars were consigned direct to Mitchell without a stop at Sioux City, or without going beyond to Sioux City?

A. Again I would have to estimate, but it wouldn't be over 20 or 25 per cent.

Q. Twenty-five per cent. The remainder of those cars then, the 55 per cent, were consigned either to Sioux City

[fol. 590] with a stop at Mitchell, or consigned to Mitchell with a stop at Sioux City, is that correct?

A. Not at the time of purchase; maybe eventually, but not necessarily at the time of purchase.

Q. In any event, that percentage ended up that way, is that right?

A. Yes. That is approximation. I do not have any figures to give you in that respect.

Q. Now, from what origins—one further question with respect to those Pacific northwest shipments: What percentage of those were rejected? Do you know?

A. I would still say that we would average one car a month, maybe a little more. It depends upon the time of the year and what the items are. Some months it will run greater than that.

Q. That would be a little over 10 per cent rejections?

A. I wouldn't say it would be over 10 per cent. I wouldn't want to say.

Q. You're speaking of the cars from the Pacific northwest?

A. From the Pacific northwest, that's right.

Q. And your percentage of rejections of cars from the Pacific northwest is somewhat lower than your percentage of rejections overall, as I think you said you rejected about one out of every six cars?

A. I don't believe I made that statement.

Q. You said you rejected about a hundred cars a year, [fol. 591] did you not?

A. No, I did not make that statement.

Mr. Merrill: One a week, I believe he said.

The Witness: One a week, I believe; about 50 a year.

By Mr. Torinus:

Q. One car a week. Now, how many of those cars received at Mitchell or Sioux City were roller cars?

A. That I cannot tell you. I do not have the information.

Q. What percentage roughly?

A. Again it would be only an estimation—from 10 to 30 per cent.

Q. Ten to—

A. Ten to 30 per cent. As I say, it's only a guess.

Q. Now, from what origins in the Pacific northwest were these cars consigned?

A. Out of the Wenatchee—you're talking about other than on the SP&S? Is that what you're asking?

Q. No. You said you received a hundred cars a year from the Pacific Northwest?

A. That's right.

Q. Now, I'm asking you from what origins?

A. Those would come out of what we call the Wenatchee Valley district, and the Yakima Valley district.

Q. Now, the origins in the Wenatchee Valley district, would they be Great Northern originated cars?

A. Right offhand, I can't tell you what points. It would [fol. 592] depend on what the points of origin were, where we purchase the merchandise from, what line it would be on.

Q. Well, what do you buy from the Wenatchee Valley district?

A. From the Wenatchee Valley district, soft fruits, apples mostly. When I say soft fruits, that's apples, peaches, pears, plums, some cherries.

Q. How many cars from that district?

A. You're talking about Wenatchee-Yakima district?

Q. The Wenatchee district, or do you want—well, let's take Wenatchee first.

A. Fifteen to 25 cars.

Q. Those would all originate on the Great Northern, would they not?

A. I'd have to refer to records to be sure. If that's the only line that services the towns, then that is correct, but I would have to look at a map to tell you.

Q. They would move via the Great Northern through Wilmer to Sioux City, is that right?

A. Some of them would move, yes, or to Minneapolis via the Minnesota Transfer and then to Sioux City.

Q. I see. In the event that they moved to Sioux City via the Great Northern, do you not have through routes to points beyond Sioux City, so that you could make diversions to points beyond?

Mr. Merrill: What is the origin of this shipment, Mr. Torinus?

Mr. Torinus: Wenatchee, Great Northern, Sioux City."

[fol. 593] The Witness: I did not make that statement.

By Mr. Torinus:

Q. Well, I'm asking you.

A. Oh, if we do have? To be honest with you, we get so little merchandise off the Great Northern, I've never had occasion to check that point, and I can't tell you.

Q. I want to know if you have through routes on those 15 to 25 cars a year, through routes beyond Sioux City?

A. Through routes beyond Sioux City? I cannot right offhand tell you.

Q. Well, now, let's take the cars that you purchase in the Yakima district.

A. Excuse me—go ahead.

Q. How many cars a year?

A. It will run about the same amount.

Q. Fifteen to 25?

A. Mm-hmm.

Q. Now, the Yakima district is served by the Union Pacific and Northern Pacific?

A. Yes.

Q. How did those cars move into Sioux City?

A. Those come in via Omaha mostly, through the Omaha gateway.

Q. Union Pacific to Omaha, thence Sioux City?

A. Sioux City through Omaha.

Q. To the extent that they come into Sioux City via the Omaha gateway, if you wish to reconsign or divert [fol. 594] those cars to a point east of Sioux City, do you not have through routes beyond Sioux City?

A. Yes, you could out of those districts. You could go beyond Sioux City.

Q. You have a full line of joint through rates via Sioux City to the entire eastern United States?

A. Well, I wouldn't say the entire eastern—

Q. At least, you're not aware of any restrictions?

A. Offhand, I'm not aware of any restrictions.

Q. And in addition, if you wish, you can unload part of a car at Sioux City that comes from that district, and the balance can go on to Mitchell, isn't that right?

A. That is correct.

Q. At a joint through rate?

A. At a joint through rate.

Q. Now, what other origins do you purchase fresh fruit from in the Pacific northwest area?

A. Outside of the Idaho points, the Wenatchee and Yakima Valley are the—is the basis where we get most of our merchandise, those two or three points.

Q. What Idaho points?

A. We have the western slope, what we call the western slope, the Payette district, and then—this side of Payette. Offhand, without looking at a map, I couldn't tell you. If I had a map, I could tell you.

[fol. 595] Q. What railroad serves these Idaho points?

A. Again, I would have to refer to a map.

Q. Well, it would be the Union Pacific, wouldn't it not?

A. Union Pacific, yes, but I don't know whether anyone else besides that railroad does or not. I can't tell you.

Q. Well, to the extent that you get any fresh fruits into Sioux City via the Union Pacific through Omaha and Council Bluffs, or via the Great Northern direct into Sioux City, you have a full line of rates to points beyond, to which you can divert cars, isn't that right?

A. I said I could not answer that definitely.

Q. At least, you're not aware of any restrictions in those routes?

A. As I say, the tariff would still tell the story. I cannot right offhand.

Q. And in addition, you also have the right to stop to part unload a car that comes in via the Union Pacific through Sioux City which ultimately ends up in Mitchell, is that right?

A. We have the right, yes.

Q. Now, in addition to that, you have joint through rates from origins in the Pacific northwest served by the Union Pacific and Southern Pacific through the Marengo gateway, thence Milwaukee into Sioux City?

A. That is correct.

Q. And those rates apply through Mitchell, South [fol. 596] Dakota, as an intermediate point, thence Sioux City?

A. That is correct.

Q. And permits you to stop to part unload a car at Mitchell if you wish?

A. Yes.

Q. And you have a full line of joint through rates to Mitchell and Sioux City and points beyond Sioux City in connection with that route, at least to destinations north of the Ohio and Potomac Rivers, isn't that right?

A. Yes.

Q. Now, you said that practically all of your fresh fruits come from the Wenatchee and Yakima districts and from Idaho points, and you have said you had 15 to 25 cars a year from the Wenatchee district, and 15 to 25 cars a year from the Yakima district.

How many cars from this Idaho district?

A. I didn't—I want to correct one statement—I didn't say all of our fresh fruits and vegetables, but most of them that we handle. I didn't mean that, but that we handle out of those districts.

Out of Idaho, the majority of our shipments out of there are potatoes. We have some cherries and some vegetables.

Q. You have some cherries and some vegetables and some potatoes out of Idaho?

A. Idaho on onions also.

Q. And onions?

[fol. 597] A. Yes.

Q. Well, now, how many cars a year from Idaho district?

A. That would be the balance of—between approximately the 100 we handle and the—oh, the 50 that you were getting out of the three districts, which would leave about 50 cars of the items coming out of the Idaho district.

Q. Well, in addition, Mr. Jaynes, you can also get cherries from the Kalispell area in Montana on the Great Northern?

A. That I cannot answer. We have never purchased or received any cherries out of that district. They haven't been offered to us—I'll put it that way.

Q. From what points—well, strike that for the moment, Mr. Reporter.

The SP&S system does not serve either the Wenatchee or the Yakima districts, or the Idaho district that you mentioned?

A. That is correct.

Q. From what points on the SP&S would you expect to purchase fresh fruits and vegetables?

A. There are numerous shippers on the SP&S at points there, if I may refer to them here: out of Oregon, Albany—

Q. Just a minute, and we'll take these points down. Albany, Oregon?

A. Mm-hmm.

Q. What is produced there?

A. Potatoes mostly, as far as the commodities we would [fol. 598] be interested in. Bend—B-e-n-d—Oregon, which is again potatoes; Culver—C-u-l-v-e-r, that is potatoes.

Q. And what—that's on the Oregon Trunk, is it?

A. I would again have to refer to a railroad map to tell you certainly, for certain. Gresham, out of there comes potatoes and—

Mr. Rockwood: Gresham, Oregon.

The Witness: Gresham, potatoes and miscellaneous vegetables.

Mr. Rockwood: What comes from Gresham?

The Witness: Mostly potatoes, cabbage, and miscellaneous vegetables, a few berries. Madras—M-a-d-r-a-s—that's potatoes and onions; and M-e-t-o-l-i-u-s—

Mr. Rockwood: Metolius.

The Witness: Metolius, potatoes from that district. Then, of course, you have your Portland area here, out of which we get potatoes and onions. There is potatoes and onions raised and available. Redmond, that is potatoes. Salem, potatoes and some cherries out of the Willamette Valley. Terrebonne—

Mr. Rockwood: What's that?

The Witness: Terrebonne—T-e-r-r-e-b-o-n-n-e—potatoes, and out of Tigard a few prunes at certain times of the year.

By Mr. Torinus:

Q. What's that last point?

A. T-i-g-a-r-d, Tigard, prunes and a few berries. Out of Washington, we have—

Mr. Rockwood: What comes out of Tigard?

[fol. 599] The Witness: Berries and prunes mostly. Out of Carson, Washington, cherries.

By Mr. Torinus:

Q. What is that Washington point?

A. C-a-r-s-o-n, Carson. Out of Kennewick, potatoes and onions and some fruits. Out of Pasco, Washington, potatoes mostly, a few fruits and vegetables. Out of Underwood, Washington, apples and pears mostly.

Q. Underwood—what was that?

A. Washington, apples and pears, Underwood, Washington.

Q. Well, now, Mr. Jaynes, with access to the Yakima and Wenatchee apple producing district, which is probably—which together, in fact, produce far and away the substantial production of apples in the Pacific northwest, you have a pretty good source of supply when you can reach that district via either the Great Northern from Wenatchee, the Union Pacific from Yakima, isn't that right?

A. I'll put it this way: There is no—as far as our business is concerned, there is no point that we shouldn't be able to reach on account of weather and conditions. As an example, cherries this year out of Washington and Wenatchee, the crop is low. We will not be able to get a sufficient supply of cherries out of that district to take care of us in our industry this year, so it must—

Q. Well, let's talk about apples now. We'll get to cherries in a minute.

[fol. 600] A. All right. Cherries, the same thing is true; it was two years ago to some extent.

Q. Now, I'm asking you about apples.

A. I mean apples.

Q. Haven't you got access now to the largest producing

points in the Pacific northwest as far as apples are concerned?

A. Apples, when they have them, but, as you know, when they have a freeze up there, and they don't have apples, which has happened in the past, then we have to go elsewhere and look for apples. It very often happens that one valley will have fruit, and the other will not due to weather conditions. That's very often the case, and the type of fruit, the condition and the quality of the fruit is better out of one district than out of the other, and that is very true in the Pacific northwest here. You may have a good crop of cherries in one district and a poor crop in the others, or vice versa, or you may have it in all of them.

Q. Well, we're on the cherries now. You've never been so hard up for cherries that you had to look in the Kalispell area on the Great Northern for cherries, I take it?

A. When I say cherries, the same thing applies to apples as it does to cherries. The same thing applies to potatoes.

Q. Well, let's stick to one species at a time. I thought we were through with apples.

A. All right, excuse me.

[fol. 601] Q. Let's get to cherries. You've never had occasion to look in the Kalispell area for cherries?

A. When you say we've never had occasion—

Q. You've never bought any cherries at Kalispell?

A. We haven't purchased any in the last two or three years—three or four years, to my knowledge, out of that district.

Q. Have you ever bought any cherries in the Polson area on the Northern Pacific?

A. No.

Q. You have access to a vast potato producing area on the Union Pacific, have you not?

A. We do.

Q. Now, as a matter of fact, out of those stations which you named on the SP&S system lines, from which you would like to make purchases, we'll say, or from which you might make purchases of fruits and vegetables, a

number of them are already served by the Union Pacific, are they not?

A. Some of them are, yes.

Q. That's true with respect to Bend, Oregon, is it not, that you mentioned?

A. I believe so. I wouldn't be too sure.

Q. Culver?

A. You know.

Q. Well, I'm asking you.

A. Well, that's what I say. I'd have to check. I didn't [fol. 602] so mark my records as I was going through, or make a mental note of it.

Q. Well, you've indicated some curiosity about these stations insofar as they're served by the SP&S system lines are concerned. Didn't you make any effort to determine whether they were served by other railroads, and whether you had other routes available?

A. I did at the time, but I did not make a mental note of it, so that I can answer you and be honest with you.

Q. Well, as a matter of fact, isn't it true, Mr. Jaynes, that starting with the stations which you gave us—

A. Mm-hmm.

Q. —Albany, Oregon, is a common point reached by the Oregon Electric, and also the Southern Pacific, isn't that correct?

A. Yes.

Q. Bend is served by the Oregon Trunk and the Union Pacific? That's likewise true of Culver, likewise true of Madras, likewise true of Metolius—

Mr. Merrill: Is this testimony by Counsel?

Mr. Torinus: I'm asking him a question.

By Mr. Torinus:

Q. And that's likewise true, is it not, with respect to Richland, Oregon?

Mr. Rockwood: Redmond.

By Mr. Torinus:

Q. Redmond, Oregon?

Mr. Merrill: Mr. Witness, do you know whether any of these statements are true or not?

[fol. 603] The Witness: I do not.

By Mr. Torinus:

Q. In other words, you've made no investigation to determine which of these various points that you've listed and carefully written down as points served by the SP&S system lines are also served by other railroads?

A. I don't—I do not agree there. I did at the time check them.

Q. But you can't tell us now?

A. But I did not mark my records so, and I cannot tell you offhand without looking.

Q. Do you know whether Portland, Oregon, is served by any railroad besides the SP&S?

A. Yes.

Q. It's served by the Union Pacific, is it not?

A. And the Northern Pacific.

Q. You have a full line of rates from Portland via the Union Pacific through Omaha to Sioux City?

A. That is correct.

Mr. Torinus: I have no further questions at this time.

By Mr. Rockwood:

Q. I'm interested in these points of production on the SP&S system. Do you know whether Albany, Oregon, is east or west of the Cascade Mountains?

A. I do not because I do not have any idea.

Q. If I asked you with respect to any one of these points, such as Bend, Culver, Madras, Metolius, Portland, Red-

[fol. 604] mond, Salem, Terrebonne, Tigard, Carson, Kennewick, Pasco, o. Underwood, could you tell me in any instances whether those are east or west of the Cascades?

A. Having not lived out here in this country and only looking at the map, as we do our purchasing, I would be unable to tell you.

Q. Do you know whether there's actually a loading track at every one of these points that you named?

A. I can't answer that at the present time. They are on those lines.

Q. Do you know whether every one of these points that you named is served by the SP&S?

A. Those points which I named are on the SP&S or the Oregon Trunk Line or the Oregon Electric.

Q. What about Gresham, Oregon? What railroad serves Gresham?

A. I'd have to refer to my records to see.

Q. The fact is, is it not, that Gresham is served only by the Portland Traction Company, which is not a subsidiary of the SP&S?

A. That I couldn't tell you.

Q. How do cherries move? In freight service, or in express service?

A. They move both ways.

Q. Most of the cars from this area move by Railway Express, do they not?

[fol. 605] A. When you say most, I wouldn't say. I couldn't tell you. It's not necessarily true.

Q. Do you know whether there's been a car off the SP&S systemslines of cherries in the last year or so that moved other than by Railway Express?

A. No, I do not.

Q. And if you bought off the SP&S and shipped Railway Express, you wouldn't be in any of these difficulties at all, would you?

A. As far as Railway Express, you would not have trouble, no.

Q. In addition to these points that Mr. Torinus asked about, what railroad serves Kennewick, Washington?

A. Again, I wouldn't want to answer without referring to the—

Q. You do not know whether or not it is a fact that the SP&S, the Northern Pacific, and the Union Pacific, all serve Kennewick?

A. That I would not want to attempt to answer.

Q. What railroads serve Pasco, Washington?

A. The same thing is true there. As I say, I did not so make a mental note or mark my records.

Q. Well, then, you cannot tell from any of these points that you have listed, located on the SP&S, whether or not there are rates available via other routes?

A. I can say this: There are rates available on certain routes, but I can't tell you the answer to your question there, no.

Q. You can't name a single point on the SP&S of your [fol. 606] list that you gave us, from which alternate routes are not now available?

A. I would answer the question—in other words, you're asking the question if merchandise originating from these other points, if the through rates are available to Sioux City and Mitchell?

Mr. Rockwood: Please have the question read to him.

(Question read.)

The Witness: Underwood, Washington, is one point where you wouldn't have alternate routes.

By Mr. Rockwood:

Q. That's right. That's local to the SP&S?

A. Yes.

Q. All right. Name another one.

A. Offhand I can't tell you whether there's any others or not.

Q. How many carloads of fresh fruits were shipped out of Underwood last year, do you know, by anybody?

A. That I couldn't tell you.

Q. You know, do you not, that the area served out of Underwood on the SP&S is a very small producing area compared with the Wenatchee district and the Yakima district?

A. But out of Underwood, you get a different type of commodities than you do out of Yakima and out of Wenatchee.

Q. Will you answer the question, please? Production in that area is very small compared with the production in the other areas?

A. That is correct.

Q. Very limited?

[fol. 607] A. That's right.

Q. Very few cars move out of there to any points in a year compared with what move out of the Yakima Valley and out of the Wenatchee Valley?

A. That could be correct.

Mr. Rockwood: That's all I have.

Exam. Dishman: Any more cross examination?

Mr. Torinus: I have just one or two questions.

By Mr. Torinus:

Q. Mr. Jaynes, did you ever make a request of any railroad freight bureau for these additional rates and routes concerning which you are testifying in this proceeding?

A. Not in recent years.

Q. Did you ever make a request?

A. We have never made a formal request.

Q. When did you first learn about this proceeding?

A. About four weeks ago, four or five weeks ago.

Q. From whom?

A. The Milwaukee Railroad Company informed us of it.

Q. They gave you some literature to read about it, did they?

A. In addition to that, our local traffic bureau—

Q. Will you answer the question, please?

A. The information first came in the way of pamphlets from the local traffic bureau, and then the Milwaukee Railroad Company.

Q. When you say the local traffic bureau, what traffic bureau?

A. Sioux City Traffic Bureau.

[fol. 608] Q. These were pamphlets put out by the Milwaukee?

A. No. Pamphlets—information put out by the traffic bureau to its members.

Q. I see, and then you were consulted by the Milwaukee about this?

A. That is right.

Q. About this case?
A. Yes.
Q. Did they give you some reading matter?
A. I was given a copy of the docket as filed.

Mr. Merrill: The complaint furnished you? You mean the complaint?
The Witness: The complaint, yes.

By Mr. Torinus:

Q. You mean the complaint?
A. Yes.
Q. You're here at Portland testifying in their behalf, at their request?
A. I'm here as a witness for the Milwaukee Railroad Company.
Q. At their request? They asked you to come here, did they?
A. They have, as a witness.

Mr. Torinus: I have no further questions.
Exam. Dishman: Anything more, Mr. Merrill?
Mr. Merrill: Yes, sir.

Redirect examination.

By Mr. Merrill:

Q. Are there dealers at each of the points you have [fol. 609] named along the Spokane, Portland & Seattle Railroad who hold themselves out to ship fresh fruits and vegetables of one kind or another from those points?
A. There are.

Mr. Merrill: That's all, sir.

Recross examination.

By Mr. Rockwood:

Q. Is there any at Carson?
A. At Carson, it's a very small shipper, and they—the lady's name is Mrs. Mills Rhode.

Q. As a matter of fact, there isn't even a loading track at Carson, is there?

A. That I can't tell you, but there's a shipper out of there.

Q. Where does that shipper out of Carson load? Can you tell me?

A. That I cannot tell you, but they have offered to our industry through our brokers merchandise out of those points. They're given as the shipper.

Redirect examination.

By Mr. Merrill:

Q. You have had some questions put to you concerning the existence of joint through rates via routes over the UP to Omaha, thence the Milwaukee to Sioux City, which permits you to reconsign and divert freely.

Is that true of traffic moving over that route to Mitchell, South Dakota?

A. That is not—the same thing does not prevail with the route to Mitchell as it does to Sioux City.

[fol. 610] Mr. Merrill: That's all, sir.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: I'll call Mr. W. M. Wasser.

W. M. Wasser was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is W. M. Wasser?

A. Right.

Q. And where do you live, Mr. Wasser?

A. Seattle, Washington.

Q. And what is you occupation?

A. I'm Manager of the Cedar Department of the Gray Lumber & Shingle Company, wholesalers.

Q. Does the Gray Lumber & Shingle Company—are you also affiliated, or is the Gray Lumber & Shingle Company—does it have an interest in any shingle mills?

A. The Gray Lumber & Shingle Company has no interest in any shingle mills, but I do.

Q. I see.

A. Personally.

Q. And are you here to testify as to the cedar lumber activities of the Gray Lumber & Shingle Company and also as to your own personal activities as a shingle mill operator?

A. That's right.

[fol. 611] Q. Now, who does the marketing—well, in the first place, where is your shingle mill or mills located?

A. Rainier, Oregon.

Q. And on what railroad?

A. SP&S.

Q. Is it served by any other railroad than the SP&S?

A. No.

Q. And who markets the shingles produced at that mill? Is it the Gray Lumber & Shingle Company, or you personally?

A. I do through the Gray Lumber & Shingle Company.

Q. I see. They are the wholesalers for you?

A. Yes.

Q. And in the course of your wholesa''ng business, do you or the Gray Lumber & Shingle Company obtain shingles from any point, other points, than Rainier, Oregon, located on the SP&S?

A. We do at times at Astoria and Seaside.

Q. Now, how about the Oregon Electric?

A. From Lebanon and Sweet Home.

Q. Is Sweet Home located—upon what branch is Sweet Home located?

A. Well, I guess they call it the Santiam branch, don't they?

Q. Yes. Is Sweet Home served by any other railroad than the Oregon Electric?

A. Well, the mills that I deal with don't. I don't know myself personally if there are any other roads there or not.

[fol. 612] Q. And how about Seaside and Astoria? Are they served by any other railroad than the SP&S?

A. No.

Q. Now, have you made efforts in the past to ship to Montana or the Dakotas?

A. Oh, yes.

Q. To sell shingles in that area?

A. Oh, yes, we do all the time.

Mr. Maguire: It is understood, gentlemen, that this testimony relates only to shingles. I'm not covering lumber.

By Mr. Maguire:

Q. And what results did you have on attempting to get into that territory, or getting into that territory?

A. Well, there's been occasions where we've been restricted.

Q. Do you know whether there are any joint through rates from your shipping point on the Santiam branch, from Seaside, Astoria, or Rainier, to any place upon the Milwaukee Railroad system?

A. Would you ask the first part again?

Mr. Maguire: Would you read the question, please?

(Question read.)

By Mr. Maguire:

Q. Let me restrict that to the Dakotas and Montana?

A. No, there is none to my knowledge, that I know about.

Q. And have you had any cases where inquiries have been made or attempts from possible purchasers, or attempts made by you to sell in Montana?

[fol. 613] A. Yes.

Q. And what was the result of those inquiries or attempts?

A. Well, approximately a year ago, I thought I could ship into Harlowton, and I come to find out I couldn't. I think that applied also to Roundup, Montana.

Q. And were those specific inquiries?

A. Oh, no. I could have had an order out of them, each

one of those places. My price was competitive, and I could have shipped from our Rainier mill.

Q. Now, is the shingle business a highly competitive business or not?

A. Very much so.

Q. And do the price levels which accrue to the wholesaler or the mill leave such a margin of profit that you can afford to absorb any freight differentials?

A. Oh, no, no. It's a feast or a famine. We're in a famine now.

Q. And so far as future prospects are concerned, do you have—strike that question, please.

Are shingles competitive with other types of roofing?

A. Yes.

Q. Non-lumber types of roofing?

A. Yes.

Q. And from present prospects, do you anticipate an easing of that competition?

[fol. 614] A. No.

Q. When you said you couldn't get in there, what was it that was keeping you out?

A. No through rates.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. What is the name under which you operate the mill at Rainier?

A. We call it Wasser Brothers Rainier. It used to be the Rainier Mill Company. We changed it.

Q. How many carloads of shingles did you ship out of Rainier in 1953?

A. I would say 80 to 100. I can't tell you definitely. I think it was something like that.

Q. All moved over the SP&S?

A. Oh, yes; no other way.

Q. That's in the year 1953. What's the name of the shingle company that you buy from at Sweet Home?

A. Lester Shingle Company and Three Pack Shingle Company.

Q. What is the principal market for cedar shingles out of this territory?

A. Well, right now it's in Montana and the two Dakotas on account of the storms they had there.

Q. On account of—that's a situation which is not normal?

A. Well, I hope it wouldn't be normal.

[fol. 615] Q. Actually, isn't California one of the major markets for shingles out of this territory?

A. It is from Rainier because we have our pick of timber and cut a high grade timber mostly. However, I'll say right now, on account of the Montana and Dakotas situation, we're cutting poor logs, so we get a low grade shingle, which they're using in those districts.

Q. Which you would not do normally?

A. Well, sometimes we have to. We don't roll these logs. We buy them, whatever is available.

Q. You don't own your own timber?

A. No.

Q. You just buy logs in the river?

A. Buy them in the open market in the river.

Q. In the Columbia River, and any market, and tow them to Rainier and use them, is that it?

A. That's right, but let me add: Out of Sweet Home, the timber is not so very good, and their percentage of shingles that go to California is, I would say, restricted.

Q. Do you know the Lester Shingle Company there at Sweet Home?

A. That's who I'm dealing with.

Q. That's who you're dealing with. Isn't it true about 90 per cent of their output goes to California?

A. I wouldn't think so. I know the orders I have, they're about 80 per cent other than California.

[fol. 616] Q. That is, the ones that you personally buy from that mill?

A. That's right.

Q. Your difficulty to Montana, on the carloads to Roundup, arises from the fact that rates on the Astoria branch of the SP&S do not apply to points west of Mobridge, South Dakota, is that it?

A. Yes, sir.

Q. If those rates off the Astoria line of the SP&S were made applicable to points on the Milwaukee west of Mobridge, South Dakota, to the same extent they are now applicable to points on the Milwaukee east of Mobridge, South Dakota, you'd have no difficulty getting into your Montana market?

A. Well, I assume that statement is true. I can't answer you definitely. I'm not a railroad man.

Q. Well, if joint through rates were published from the Astoria branch of the SP&S to points west of Mobridge—

A. Yes.

Q. —that would take care of your situation in marketing in Montana on the Milwaukee, would it not?

A. Well, I think so. They'd have to be competitive rates. That's all I'm interested in.

Q. And, of course, you don't know the history of those rates to determine what carrier was responsible for the fact that they do not now apply to points west of Mobridge? You don't know that?

[fol. 617] A. No, I have no idea.

Mr. Rockwood: I think that's all.

Exam. Dishman: Any more cross examination?

By Mr. Torinus:

Q. Mr. Wasser, did you ever ask any railroad official for those competitive rates that you'd like to have, or make a request of any railroad rate bureau for their establishment?

A. Not personally, but I think my brother did, who has passed away, and I can't answer that.

Q. You can't answer that definitely?

A. No, I can't answer definitely.

Q. At least in recent years, you yourself have not made any such request?

A. No, I haven't.

Q. When did you first become acquainted with this case?

A. With this present condition? Oh, about four years ago.

Q. No. When did you first become acquainted with this pending proceeding before the—

A. Of this case, you mean?

Q. Yes.

A. About two months ago, approximately.

Q. You discussed this case with the Milwaukee, did you, officials of the Milwaukee?

A. Yes.

Q. Also officials of the SP&S?

[fol. 618] A. No, no.

Q. Just the Milwaukee?

A. Just the Milwaukee.

Q. And you're here as a witness at the request of the Milwaukee?

A. Yes, sir.

Mr. Torinus: I have no further questions.

Mr. Maguire: With your indulgence, Mr. Examiner, there's one final question which I wish to ask.

Redirect examination.

By Mr. Maguire:

Q. Mr. Wasser, would the establishment of through rates, competitive through rates, to Spokane from the SP&S to the territory which you have previously mentioned, be desirable from the point of view of your business?

A. Oh, yes, it would. We'd have a larger field to sell in.

Mr. Maguire: That's all.

The Witness: And we're interested in freight rates into those particular territories.

Mr. Maguire: That's all. Thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: I'll call Mr. Wright.

L. E. WRIGHT was sworn and testified as follows:

Direct examination.

[fol. 619] By Mr. Maguire:

Q. Mr. Wright, will you state your name for the record?
A. L. E. Wright.
Q. And where do you live?
A. Junction City, Oregon.
Q. And is Junction City located in the Willamette Valley?
A. Yes, sir.
Q. And about what distance is it from Eugene?
A. Thirteen miles.
Q. And in what business are you engaged?
A. Feed and seed.
Q. And with what firm are you connected?
A. The Farmers Warehouse, Incorporated.
Q. What position do you hold with that corporation?
A. Manager.
Q. Now, do you have a warehouse at Junction City?
A. Yes.
Q. And by what railroad or railroads is that warehouse served?
A. Served by the Southern Pacific and the Oregon Electric.
Q. I wonder if you could give us just a brief description of the general size of the warehouse, and the location of the tracks with reference to it?
A. The warehouse is somewhat in an "L" shape, and it's approximately 208 feet each way. It's served on one side by the Southern Pacific and on the other side by the Oregon Electric.
[fol. 620] Q. And what area do you deal in so far as your feed, on the one hand, and then so far as your seed is concerned?
A. The area is limited as far as feed, but on seed we serve an area east of the Mississippi, and also include Arkansas, Oklahoma, and Texas, some other shipments outside of that, but that covers the area we ship to principally.
Q. What kind of seed do you deal in?

A. Rye grasses; vetches, fescues, principally.

Q. And do you deal in any grains?

A. Probably about one-third of our shipments—a quarter to a third of our shipments would be in grains.

Q. And what types of grain?

A. Principally barley, some wheat.

Mr. Rockwood: You say one-third of your shipments?

The Witness: From one-quarter to one-third.

By Mr. Maguire:

Q. Now, with regard to your outbound shipments, who defines or designates the railroad routing that will be given those shipments?

A. That varies. Sometimes it's requested by the purchaser, and sometimes we are allowed to route it as we see fit.

Q. Are you familiar with that phase of the complaint which is on file here, wherein the Milwaukee Road asks for joint through rates through Spokane, via the SP&S, and, so far as you're concerned on grain and seeds?

A. Yes.

[fol. 621] Q. Do you have via the Oregon Electric—you are on the Oregon Electric, aren't you?

A. That's right.

Q. Via the Oregon Electric and SP&S, do you have joint rates to points on the Milwaukee Railroad at the present time?

A. My understanding is that we—if we want to use a circuitous route, we could have a short route—a short Milwaukee haul to the Omaha gateway.

Q. I see, but do you know whether there are any rates via the Oregon Electric to Portland—or Willbridge, SP&S to Spokane, and then Milwaukee from there on?

A. I know there are none. At least, it's reported that way.

Q. Now, with respect to cars which may be available at the time you receive an order, will you state whether it is—whether the availability of joint through rates via either the SP—Southern Pacific, or the Oregon Electric, whether

the existence of competitive joint rates to a common destination, is of interest to you one way or the other?

A. It's quite a bit of interest. It would be very desirable as far as I'm concerned.

Q. And would you elaborate upon that a little bit; if you have any illustration as to convenience from those extra routes, tell us about it.

A. Perhaps as good an illustration as I could give is just a very recent shipment, where the purchaser of a carload [fol. 622] of seed from us desired the longest possible Milwaukee haul. The shipment was consigned to Milwaukee, Wisconsin, and we preferred to load that shipment on Oregon Electric because the seed was located closer to that track.

Because of our desire to accommodate our customer, it was necessary for us to haul—to truck that—to hand-truck that a much greater distance to the SP track in order to get the routing—in order to get the routing of the long haul from Spokane via Milwaukee.

Q. And did that hand-trucking—was that done without expense to you?

A. No, it can't be. We pay our men by the hour.

Q. And do you have situations which may arise from time to time where the situation might be reversed, where you would want to route Oregon Electric and have your grain, or whatever it is, over on the SP side of the warehouse?

A. It could be. It could very easily happen either way, and it is desirable to load one way or the other.

Q. And what is your general opinion so far as the disposition of your products is concerned as to the desirability or nondesirability of competitive rates via either the Southern Pacific or the Oregon Electric?

A. It would be very desirable to have competitive rates via either. Specifically and generally, it would be more desirable to have the greatest number of rates that would [fol. 623] apply to any point.

Q. Now, on the question of the immediate, present availability of empty equipment—and I'm talking about car shortages—but just simply if there are cars from either

line, does that have any effect or have any bearing upon the question of convenience of these alternate routes?

A. Well, If I understand your question correctly, certainly, we have had at different times difficulty in getting cars either way.

Q. And you mean you have difficulty with both lines?

A. That's right.

Q. Do you sometimes have difficulty with one and not with the other?

A. Occasionally,-yes.

Mr. Maguire: You may cross examine—just a moment. There is just one more question that I overlooked.

By Mr. Maguire:

Q. From what area do you buy your seeds? That is, where are these seeds and grain produced that you buy?

A. Principally, anywhere within an area of approximately 20 miles of Junction City.

Q. All of it within the State of Oregon?

A. Yes.

Mr. Maguire: That is all. You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. And all that seed that you buy, of course, comes in by [fol. 624] motor vehicle?

A. That's correct.

Q. Either the growers' own rigs or your own rigs?

A. With very, very little exception, yes.

Q. How many cars of seed did you ship over the Oregon Electric last year?

A. I would have to make a pretty wild guess. I haven't broken that down. I would say approximately 20.

Q. As a matter of fact, weren't the cars that moved SP&S limited to five cars?

A. I couldn't tell you. I just don't know. I know about how many were shipped, but I couldn't break it down.

Q. How many did you ship in the aggregate in seed from your warehouse?

A. Average of approximately—that varies from year to year from probably 50 to 75 cars. Well, now, I shouldn't say from our warehouse. We ship from outlying points. What I mean, our firm ships that many.

Mr. Rockwood: I have nothing further.

Exam. Dishman: Is there any more cross examination?

Mr. Torinus: I have just one question.

By Mr. Torinus:

Q. Mr. Wright, did you ever make a request to the officials of the SP&S system lines, or any other railroad official, or of any rate bureau, for these additional joint rates on seed that you were testifying that you might have occasion to [fol. 625] use in this proceeding?

A. No, I haven't.

Q. You've discussed this case, of course, with officials of the Milwaukee Railroad?

A. Yes.

Q. You're here testifying at their request, are you?

A. Yes.

Mr. Torinus: I have nothing further.

Redirect examination.

By Mr. Maguire:

Q. Are you here solely to promote the interest of the Milwaukee Railroad?

A. No.

Q. Whose interests are you here to promote?

A. My own.

Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: We can start another witness, Mr. Examiner, if you'd like.

Exam. Dishman: All right, we might start and finish direct anyway.

Mr. Maguire: Mr. Vern McGuire.

VERN MCGUIRE was sworn and testified as follows:

Direct examination.

[fol. 626] By Mr. Maguire:

Q. Will you state your name, please?

A. Vern McGuire.

Q. Mr. McGuire, I'm going to ask you the most obvious question first. Are you any relation to me?

A. No.

Q. Where do you live, Mr. McGuire?

A. Eugene.

Q. And what is your business?

A. I manage a lumber company, Eugene Raymac Lumber Company—R-a-y-m-a-c.

Exam. Dishman: Wholesale Lumber?

The Witness: No; manufacturing.

By Mr. Maguire:

Q. And are you connected with any other companies or concerns in the lumber business?

A. Yes. I'm Treasurer of a sawmill that we own at Blue River, Oregon, the production of which is trucked to Eugene about 50 miles to our plant at Raymac, where we have remanufacturing facilities, and load it aboard a car at that point, and I'm also President of Dunmar Lumber Sales, which is the selling organization for that sawmill.

Mr. Rockwood: What is the name of the selling agency?

The Witness: Dunmar Lumber Sales—D-u-n-m-a-r.

By Mr. Maguire:

Q. Are you financially interested, or in the employ of, or in any way connected with any other companies engaged in various phases of the lumber business?

[fol. 627] A. Well, maybe to clarify that somewhat, as Raymac Lumber Company, we lease quite extensive remanufacturing facilities on SP ground located at—about the junction of Seneca Road and the SP Coos Bay line in Eugene.

We have two planers and two resaws, a sawmill, and an additional planer at the sawmill. We lease that—we sublet the sawmill and one of the resaws and one of the planers to two other organizations; the sawmill to Seneca Sawmill Company, and the planer to O. & C. Lumber Company.

We act as the landlord only to those people.

Q. Do you act as sales agent for any particular mills, other mills in that location, other than those you've mentioned?

A. No, none other than those.

Q. Now, you have the—let's go into your sales activities first.

A. Well, primarily, we sell only to local Eugene wholesalers, primarily to what we term transit brokers, fellows that buy lumber and roll it without having it sold.

Q. And do you sell any lumber yourself direct to customers other than the wholesalers?

A. Occasional cars into California, very occasional.

Q. Now, I will ask you whether it would be to the benefit and desirable from the point of view of the mills and concerns with which you are affiliated if joint through rates without limitations as to destination territory were to be [fol. 628] established via the Oregon Electric and SP&S to Spokane, thence via the Milwaukee Railroad, to the eastern United States, that is, each of Eugene?

A. Well, in a general way, we feel that the establishment of the rate would be advantageous to us in this respect: We're located on the Southern Pacific Railroad, but we can ship OE through reciprocal switching, and, in a general way, in talking to the transit brokers, they do not move too much northern routings because quite often they have indicated that they're afraid of lack of diversion privileges on the northern route.

Most of our stuff goes out SP, UP, Council Bluffs, or D&RG to Topeka, MoPac.

Q. Well, will you state whether or not, whereby transit

operators could move through the northern routes, it would be an indirect benefit to you by supplying additional demand for your company?

A. Well, we feel that it would, and, what we are primarily interested in, is that we feel that, if the northern lines—if there was more business—put it that way—they would put more cars to use during the car shortage, which we're troubled with and which affects us primarily.

There have been movements in the summertime. The great movement is in the summertime, and we've been shut down to maybe 40 or 50 per cent of car supply in the summertime. That's what we're primarily interested in, if we could get more movements through the northern gateway, we feel it would be of advantage to us.

[fol. 629] Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. You can now move through the northern gateway to Minnesota Transfer?

A. Yes, we go OE, GN, SP&S, GN, to the Transfer.

Q. And you can divert fully to all points east of the Minnesota Transfer?

A. That's right.

Q. Into some points in eastern Iowa, and Missouri, and the southwest?

A. As I understand, you can come clear back into the Texas Panhandle with that.

Q. So that you have a pretty wide open route?

A. Yes.

Q. Via the northern lines?

A. We do have, except we feel it would give us some additional.

Q. You have an equally wide open route via the Southern Pacific to Ogden, Union Pacific to Omaha?

A. Yes. We even move some stock—some of it goes out SP, Portland gateway.

Q. And Union Pacific?

A. And UP.

Q. So, you've got two very good routes as far east as the Mississippi, or Omaha?

A. Yes.

[fol. 630] Q. But you want one more?

A. Well, anything to help us. Car shortages are serious with us in the summertime, and we feel that any help that we could get would be—I mean, it's ulterior motives. It's selfish self-interest with us.

Q. Who has had the worst history of car shortages in this area in the last two years?

A. Southern Pacific.

Q. The Southern Pacific. It reached the point where a complaint was filed with the Interstate Commerce Commission?

A. That's right. Suits were filed by Martin Brothers Box too.

Q. Yes. Have you in the last year ordered a car from the Oregon Electric that wasn't filled rather promptly?

A. No, we haven't.

Q. And when car shortages appear, they are generally over all railroads in the territory, are they not?

A. Yes, except that at times cars seem to be available on the OE to people who have been shipping OE, when we couldn't get them on the SP, and, having not shipped too many OE cars, we're reluctant to go to them to ask for empties at the time.

Q. You agree that it wouldn't be quite cricket to go ask them for cars when you weren't giving them much business?

A. No, I don't think so, no.

Mr. Rockwood: That's all.

Exam. Dishman: Any other cross examination?

[fol. 631] (No response.)

Exam. Dishman: Anything more, Mr. Maguire?

Mr. Maguire: Nothing more.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We'll now recess for lunch until 2 o'clock.

(Whereupon, at 12:25 p.m., a recess was taken until 2:00 p.m., of the same day.)

[fol. 632] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, please.
Mr. Maguire: Our next witness will be Mr. William Gee.

WILLIAM H. GEE was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is William H. Gee?
A. That's right.
Q. And what is your occupation, and where do you live, Mr. Gee?
A. I'm a wholesale grain dealer. My residence is Seattle.
Q. And is your main place of business there?
A. Yes.
Q. Do you carry on your business through a corporation, or a business name?
A. Yes, it's William H. Gee, doing business as Henry D. Gee Company, sole owner.
Q. I believe you stated you are in the wholesale grain business?
A. Yes.
Q. And I want you to direct your attention particularly to your dealing in corn. Where do you buy corn or procure corn for sale in the Pacific northwest?
A. Well, we buy corn from dealers in Minneapolis, Sioux City, and Omaha, as well as from country points in the corn producing areas.
Q. And what states do you include in the corn producing areas?
[fol. 633] A. Minnesota, Iowa, South Dakota, and Nebraska, some in North Dakota.
Q. And do you designate or control the routing of this

corn when it is shipped from either the broker or the country station?

A. Yes.

Q. When you order corn shipped out—cross that question out, please.

Do you sell your corn in the Pacific northwest?

A. Yes.

Q. And in what general area do you dispose of it? In what states?

A. Principally Washington, but some in Oregon, western Oregon.

Q. So far as routing is concerned, when you order the car moved out from the point of origin, do you know at that time just where that corn will end up, that particular carload?

A. Very seldom.

Q. And what is your practice as to routing on this corn as between the different railroads?

A. Well, we—I might elaborate here.

Q. Yes.

A. The corn is generally sold, although we sometimes have a position in corn. We belong. In which event, we're the dealer of the corn. We start the corn out from the point of origin to either Spokane or the Seattle diversion points, route it with the delivering carrier specified according to, in our judgment, what destination or what delivery carriers will be needed most at destination, or will be able [fol. 634] to be utilized by ourselves to our best advantage.

Q. And as between the Milwaukee Road, and the Northern Pacific, and the Great Northern, do you habitually route some of the corn via each of these routes?

A. Yes. Yes, we route some on each route.

Q. Now, do you have joint through rates westbound on corn through Spokane via the Milwaukee Road from point of origin and for delivery on the SP&S?

Mr. Torinus: Will you specify the point of origin, Mr. Maguire?

Mr. Maguire: I said origins on the Milwaukee Road.

Mr. Torinus: Will you specify any particular origin?

Mr. Maguire: I didn't at that time.

Mr. Torinus: Will you do so, please?

Mr. Maguire: I will at the proper time, or you can do so on cross examination.

Mr. Torinus: The question is indefinite.

Mr. Maguire: Do you object to it on that ground?

Mr. Torinus: Yes.

Mr. Maguire: The question, Mr. Examiner, was whether he routed corn—whether he knew if there were through rates from points on the Milwaukee Road to Spokane, and thence via SP&S to destinations on the SP&S.

Exam. Dishman: From any points on the Milwaukee? [fol. 635] Is that your question?

Mr. Maguire: From any points on the Milwaukee Road.

Exam. Dishman: The witness can answer if he knows.

The Witness: To my knowledge, there are not.

By Mr. Maguire:

Q. Now, what is your situation with regard—strike that question, please.

Do you in your dealings avail yourself or have to make use of transit privileges, storage, or other similar transit privileges in the States of Iowa and South Dakota from the country points? Does it come to rest and then move on to destination?

A. Generally speaking, that's true. We have no control over the point of origin prior to its shipment from, say, Sioux City, but we do specify the delivering carrier at destination.

Q. And is it necessary for the—will you state whether or not it's necessary or convenient for the disposition of your corn, say, after it reaches inspection at Spokane, to have transit through Spokane via whatever carrier is to be the delivering carrier?

A. I don't believe I understand that question.

Q. Well, let me rephrase it. Do you transit your car of corn at Spokane at all?

A. Well, we divert them.

Q. Well, yes, you divert. That's one of your transit privileges.

A. Yes.

Q. You divert it from Spokane?

[fol. 636] A. Yes.

Q. And do you store it at Spokane at all?

A. Very seldom.

Q. Is Spokane an inspection point?

A. Yes.

Q. Do you know what rates—cross that out, please.

From the point of view of making a ready sale, is the matter of transit after the car is sold, we'll say, at Spokane to some dealer in the northwest, dealer or manufacturer, is the question of whether or not transit will be available at Spokane or any point west thereof, of interest or of value to the customer?

A. In the case of any terminal mill operator in any of the—well, Spokane, Seattle, Tacoma, or Portland, who is mixing feed for resale, it is very important.

Q. And if there are no transit privileges available, does that have a tendency to encourage or to discourage sale to manufacturers in that situation? I'll begin with a carload.

A. Well, if the right transit is not available on that particular carload, generally speaking, the buyer will either refuse to buy it, or will insist on quite a substantial discount.

Q. I see. Will you state whether it is to your benefit, the benefit of your business, to have as widespread routes Spokane and west as will permit the wide use of transit privileges by your buyers?

A. It's very important because we customarily route—[fol. 637] I'm not alone in this; other dealers do the same thing—we customarily route corn unsold to coast diversion points with the idea of selling it either in transit or at the diversion point.

If we happen to be overloaded with corn originating on a railroad that is not the transit the buyer wants, as I said before, he will either refuse it or accept it only at a substantial discount. So, it's to our advantage to be able to move in as many directions from the point of diversion as we possibly can.

Q. And in the points of diversion, you have already mentioned Spokane, have you?

A. Yes.

Q. Now, then, do you have a problem so far as the balance of the through rate is concerned on corn which has been shipped originally from a country point and stored or otherwise given transit treatment at Sioux City?

A. Do we—what did you say?

Mr. Maguire: Will you read the question, please?

(Question read.)

The Witness: Yes.

By Mr. Maguire:

Q. And could you tell us what that problem is that you have in that connection?

A. Well, we are limited to the movement within the confines of the State of Washington to—wait a minute—we are limited to a further transit movement within the State [fol. 638] of Oregon on corn which—on which there has been in excess of 19 and a half cents inbound paid at Sioux City. I'd like to correct that. Nineteen and a half cents might not be the correct point, the exact amount. I believe that is correct, however.

Q. Is that a 19 and a half cent maximum drawback?

A. That's right.

Q. And do you have a route out of Sioux City via the Milwaukee to Terry, Montana, thence Northern Pacific to Spokane?

A. Yes.

Q. And what is the maximum drawback on your rate from the country point into Sioux City that is allowed under the tariff by that routing?

A. I believe it's 26 and a half.

Q. Now, this 19 and a half cent you mentioned is to Portland, I think you said, did you not? That is, on—

A. That is the maximum amount of inbound that the roads leading south from Portland will participate in. Anything in excess of the 19 and a half cents must be borne by the shipper.

Q. Well, how about via your route Milwaukee from Sioux City, via Marengo, thence Union Pacific to Portland? What is your maximum drawback under that route?

A. We can get to Portland with the 26 and a half cent inbound all right, but then it's dead at Portland. It will not go south of Portland at all. In other words, in order to go south of Portland, we must be using transit that has [fol. 639] had not to exceed 19 and a half cents inbound to Sioux City.

Q. And by the Union Pacific route, is there a maximum on your through rate, a maximum drawback on your through rate into Portland via the Union Pacific, Marengo?

A. Well, I believe we can get to—if my memory serves me correct—we can get to Portland via the UP at Marengo if not to exceed 26 and a half cents has been paid inbound at Sioux City.

Q. Now, what benefit, if any, would result to you from having a through rate, let us say, from Sioux City, Milwaukee to Spokane, and thence SP&S to Portland and to other points on the SP&S system?

A. Well, it would allow me to consign corn on the Milwaukee direct to Spokane with the privilege then of moving to SP&S points beyond Spokane, as well as being able to go to local points on the Milwaukee north of Seattle or intermediate, or between Spokane and Seattle.

In other words, I can make up my mind after the corn gets to Spokane, rather than before, what I'm going to do with it.

Q. And are there any limitations under the present rate adjustment, the absence of through rates via Spokane, as to what can be done with a car which is routed via Milwaukee from Sioux City to Spokane? Are you limited to any particular class of customers? I think you—

A. You mean via Terry, Montana?

Q. No. Milwaukee to Spokane from Sioux City. I think [fol. 640] you've answered that question anyway. I won't ask you that. We'll strike that.

To refresh your memory, Mr. Gee, I recall what you told me when we talked about this before. Is the 25 and a half cent maximum drawback—your rate from your country station into Sioux City—permitted via the present Union Pacific, Marengo route?

A. Well, I don't want to get mouse-trapped into any arguments on rates, Mr. Maguire. I don't know. Unless

I've got a rate book in front of me or a good rate man to straighten me out, I'd rather not take any position on it.

Q. Then we will not pursue that question any further.

Now, what is the effect of the present absence of through rates on corn via the Milwaukee into Spokane, and thence down to SP&S? What is the effect upon the amount of corn which you route into Spokane via the Milwaukee? Do you let it come in freely, or do you hold it to a minimum, or what?

A. We have to hold it to a minimum because we're without the opportunity to freely divert the corn to the various markets. We must be careful not to have more Milwaukee corn on track than can be readily disposed of to local points.

Q. Well, the holding of the Milwaukee cars to a minimum, does that have any effect upon your ability to sell to local customers on the Milwaukee, or mills wanting Milwaukee transit tonnage?

A. Yes, it does.

[fol. 641] Q. What effect does it have?

A. Well, frequently, we don't have it simply because we're afraid to get too much routed Milwaukee and wake up and find out we've got to take a discount on what we have sitting there on track.

Q. Would the establishment of through rates via the Milwaukee—we'll use Sioux City as a sample of your origin territory—would a joint through rate, competitive through rate, via the Milwaukee to Spokane, and thence via SP&S to points on the SP&S—would that be desirable from the point of view of your own interests?

A. Yes, it would.

Mr. Maguire: You may cross examine.

Mr. Torinus: Mr. Examiner, I suggest that, before we cross examine this witness, we might have a recess of five minutes, because this rate adjustment of which he speaks is a little different from the adjustment that has been covered heretofore, and I think it might shorten the cross examination by some time.

Exam. Dishman: All right, recess for about five minutes.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please.

Mr. Maguire: Before cross examination commences, I would like to ask Mr. Gee a couple more questions.

By Mr. Maguire:

Q. Mr. Gee, during the recess which has just been held, have you checked in the tariff as to whether on the routing [fol. 642] via Milwaukee to Marengo, and thence Union Pacific, the higher drawback on the through rate on cars from the country station into Sioux City will apply via that route, or whether it is a lower drawback?

A. I have examined the tariff and I find that the higher drawback of 25 and a half cents will not apply to Portland.

Q. I see. So that on shipments moving over the present open route under the present through rate via Milwaukee, Marengo, Union Pacific, would you have the benefit of the higher drawback? You would not, you say?

A. The rates will not apply to points on the Union Pacific with a 25 and a half cent inbound paid at Sioux City.

Q. And does that help you or prejudice you in the marketing of the corn which you say you have to ship a certain amount of via Milwaukee through Spokane?

A. It prejudices us because the big bulk, I would say 95 per cent or more of the corn that we ship is higher than 19 and a half cents inbound.

Mr. Maguire: That's all. You may cross examine.

Exam. Dishman: In order that the record might be clear on this point, you used the term "drawback", did you?

The Witness: Yes.

Exam. Dishman: Would you just explain that?

The Witness: When I say "drawback", I'm referring to inbound, the amount of freight that is paid from the coun- [fol. 643] try station point of origin to Sioux City.

Exam. Dishman: That's what you refer to as the drawback, is it?

The Witness: Drawback or inbound. I'm assuming they are synonymous.

By Mr. Maguire:

Q. And when you say "drawback", what is the practice with regard to the through rate on corn which originates at a country station, is transited at Sioux City, and then moves on to final destination out on the west coast? Is the inbound rate refunded to the person who pays the freight bill?

A. Well, it amounts to that.

Q. It really is a drawback from your through rate from the country station, is that what it is?

A. That is allowed—the amount of inbound is allowed on the freight bill or on the invoice.

Exam. Dishman: As a deduction?

The Witness: Yes. Well, now, let me get this straight. The full amount of the freight is 86 and a half cents.

Exam. Dishman: From where, now?

The Witness: From the point of origin via Sioux City to Seattle.

Exam. Dishman: Yes.

The Witness: This 19 and a half cents inbound has been paid between the country point and Sioux City. Then the full freight is assessed, and the inbound is deducted. The [fol. 644] buyer on the west coast still pays the full 86 and a half cents inbound—86 and a half cents freight from country point to Seattle.

By Mr. Maguire:

Q. Well, then, where does your drawback come in? Is that the 86 and a half cents—

A. Well, I mean, he—what I'm trying to say is: The buyer on the west coast doesn't buy his corn any cheaper, whether it's 19 and a half cents or 25 and a half cents inbound.

Q. Well, where does the advantage or the disadvantage come in then? Wouldn't he deduct that from the through rate from the country station when he pays his freight bill in Seattle—doesn't he pay the through rate from the country station, less the amount of the inbound charge from the country station into the transit station, which is Sioux City?

A. Yes, that's right.

Q. Well, then, that's where your difference comes in there between these two drawbacks, the advantage or the disadvantage of the higher or the lower drawback, isn't it?

A. Well, if you ship the corn to a point where the 25 and a half cent inbound doesn't apply, then the buyer or somebody is forced to pay the difference between the 19 and a half cents and the 25 and a half cents. So, it's up to somebody to see to it that the—on those points where only a maximum of 19 and a half cents inbound is paid, then he'd better originate the corn from stations on which the inbound to Sioux City is no more than that—than that 19 and a half cents.

[fol. 645] Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Torinus:

Q. Mr. Gee, you were not, as I understood your testimony on direct before the recess, sufficiently familiar with this Union Pacific tariff provision to comment on it until your attention was again called to it during the recess just a moment ago, is that right?

A. Yes.

Q. Now, that situation, which you have just described, could be corrected, could it not, by a change in the Union Pacific tariff?

A. You mean, if Union Pacific would allow the movement between Spokane, or between Marengo and Portland?

Q. If the Union Pacific would allow a maximum of 25 and a half cents instead of 19 and a half cents drawback, as you have described it, that would correct the situation with respect to movements into Portland via Milwaukee, Marengo, thence Union Pacific, Portland, isn't that right?

A. Sure, but it wouldn't help us to any SP&S points.

Q. It would help with respect to any corn terminating in Portland, is that right?

A. Yes.

Q. Or moving beyond Portland?

A. Now, wait a minute—providing the buyer in Portland wanted Union Pacific transit. If he wanted other transit, then it wouldn't help until the situation was corrected with [fol. 646] the SP&S also.

Q. Would it correct the situation with respect to movements beyond Portland, do you know, via the Union Pacific, or via Union Pacific, Southern Pacific?

A. You're speaking about this 25 and a half cent inbound?

Q. Yes.

A. Only northbound.

Q. Only northbound from Portland?

A. That's right.

Q. Or terminating at Portland, is that right?

A. Yes.

Q. Where is the big market with respect to corn on the Pacific Coast, do you know?

A. Well, there are three fairly large consuming areas. There's the Columbia Basin area; there's the Yakima Valley; and then there is the area perhaps from Chehalis north to Bellingham.

Q. Now, does the corn that is purchased in Portland usually move beyond Portland at joint rates, do you know?

A. I'm not so very familiar with the movement of the corn beyond Seattle or beyond Portland.

Q. You don't know to what extent it may move beyond Portland, either as a result of the exercise of the diversion privilege, or some transit operation?

A. I believe the bulk of the corn probably does move beyond Portland, Portland being either a diversion point or [fol. 647] manufacturing center.

Q. I see, and would it move beyond Portland generally to points north of Portland?

A. I believe both. I believe it moves both north and southbound.

Q. Both north and southbound. Now, are there any joint through rates on corn westbound from origins on the Milwaukee to destinations on the Great Northern or the Northern Pacific, which would apply Milwaukee, Spokane, thence Great Northern or Northern Pacific beyond?

A. I don't believe so.

Q. To the extent then that you desire to dispose of corn west of Spokane which would move inbound via the Milwaukee, to the extent you wish to dispose of that corn at points reached by the Great Northern or Northern Pacific and wish to move beyond Great Northern or Northern Pacific, you would not be able to use Milwaukee transit credits, is that not correct?

A. I believe I understand your question. You mean, if the corn comes to Seattle, for instance, and it's manufactured there, then it may not move to a local point on the Great Northern using Milwaukee transit? Is that what you mean?

Q. If it comes to Spokane via the Milwaukee and moves west of Spokane via the Great Northern, are transit credits available so that the corn can move through Spokane westward at joint through rates? Do you know?

A. You mean, are there joint rates?

[fol. 648] Q. Are there joint rates that apply westbound on corn via the Milwaukee to Spokane, thence Great Northern or Northern Pacific?

A. Not that I know of.

Q. It isn't a usual situation, I take it, from your testimony for the carrier which moves corn inbound to Spokane to join in rates with a competitor west of Spokane at joint rates which would apply via Spokane?

A. That's correct, it's not. May I retract that statement?

Q. All right.

A. It's not exclusively so. I can think of cases where such a situation does exist.

Q. In connection with—insofar as there might be joint rates between the Great Northern and Northern Pacific, or Milwaukee and Northern Pacific, or Milwaukee and Great Northern?

A. No. I was thinking of the fact that corn may be moved into Spokane on the Union Pacific and diverted to points north of Seattle on the Great Northern at the through competitive rate.

Q. Now, to what points on the SP&S would you desire to dispose of corn out of Spokane?

Mr. Maguire: Pardon me. I didn't hear that question.

By Mr. Torinus:

Q. To what points on the SP&S would you desire to dispose of corn coming into Spokane from the east?

A. I would like to afford my customers in Portland the opportunity to divert the corn after being manufactured into feed to points on the SP&S. What those points are, I [fol. 649] can't tell you, but there is a demand for corn that will divert free from Portland to points on the SP&S.

Q. Now, your customers already are accorded that privilege in connection with corn that moves inbound either Great Northern or Northern Pacific to Spokane, isn't that right?

A. That's right.

Q. Mr. Gee, are you a lessee of a grain dock at Tacoma that's owned by the Milwaukee Railroad?

A. I am.

Q. When did you enter into that lease?

A. April 16th.

Q. This year?

A. Beg your pardon?

Q. This year?

A. Yes.

Q. Do you have a copy of the lease with you?

A. No, I don't.

Q. Do you know whether or not it contains a clause requiring you to route competitive traffic into Tacoma via the Milwaukee?

A. I certainly know all about it. It contains no such clause whatsoever.

Q. It does not?

A. There is no provision in the agreement whatsoever whereby I'm required to route freight or favor the Milwaukee in any way whatsoever.

[fol. 650] Q. To the extent that—well, strike that, Mr. Reporter.

When did you first hear about this case, Mr. Gee?

A. The date?

Q. Yes.

A. I don't recall it. I would guess some two or three weeks ago.

Q. Through the Milwaukee Railroad representatives?

A. Yes.

Q. Prior to that time, had you ever made a request for the joint through rates that you have discussed in your testimony with the North Pacific Coast Freight Bureau, or with any official of the SP&S Railroad?

A. No, not formally.

Q. Well, when you say "not formally", what do you mean by that? Have you made any—

A. I have discussed it some. I have discussed with officials of the Milwaukee Railroad the reasons why I didn't route more corn on the Milwaukee.

Q. Well, did you ever state to officials of the SP&S, or present to any freight bureau a specific request for the type of rates and routings which you now say may be desirable?

A. No, I haven't.

Mr. Torinus: I have no further questions.

Redirect examination.

By Mr. Maguire:

Q. Mr. Gee, you were questioned as to whether or not you leased any property from the Milwaukee, and you stated [fol. 651] that you did. I don't know just what the implication of that question was, so I'm going to ask you this question now:

Did anyone on the Milwaukee ever directly or by implication threaten you or say to you, or intimate in any way, that all might not go well with your lease if you didn't come and testify here?

A. No, no, they didn't. I was under no compulsion or threat or anything whatsoever.

Q. And in whose interest are you appearing here? On behalf of the Milwaukee, or on behalf of your own business?

A. My own.

Mr. Maguire: That's all. Thank you—oh, just one more question. I beg your pardon.

By Mr. Maguire:

Q. Now, Mr. Torinus brought out this question also that it is not usual to open routes via a competitor, or to establish joint through rates with a competitor whereby the road which has the traffic in its possession would have to part with possession of it before it had its complete haul. Did you remember that question?

A. Yes.

Q. In what territories do the SP&S and the Milwaukee parallel each other or serve the same point, or approach each other, except at Spokane?

A. No place that I know of.

Mr. Maguire: That's all.

[fol. 652] Recross examination.

By Mr. Rockwood:

Q. Well, at what points does the Milwaukee parallel, or approach, or compete with either the Great Northern or Northern Pacific between Spokane and Minneapolis, do you know?

Mr. Maguire: Just a moment. I will interpose a formal objection to that question because it is outside the scope of the issues of this case.

Mr. Rockwood: Well, of course, it isn't because it's directly a part of the defense, and the defense is raised by the answer, but I think the question speaks for itself, and I will withdraw it.

Mr. Maguire: Then we haven't any question?

Mr. Rockwood: That's correct.

Mr. Maguire: Anything further?

Mr. Torinus: No further questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: We'll call Mr. Einar Linstad.

EINAR LINSTAD was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Will you please state your name and place of residence for the record?

A. Einar Linstad—E-i-n-a-r L-i-n-s-t-a-d.

[fol. 653] Q. And where do you live, Mr. Linstad?

A. 5910 Northeast 52nd Avenue.

Q. In what city?

A. Portland.

Q. And in what business are you engaged, Mr. Linstad?

A. I'm an employee of the Niedermeyer-Martin Company.

Mr. Rockwood: May I have that company again?

Mr. Maguire: Niedermeyer-Martin Company—N-i-e-d-e-r-m-e-y-e-r.

By Mr. Maguire:

Q. And in what business is Niedermeyer-Martin Company engaged?

A. We're wholesale brokers in lumber, timber, poles, piling, cross arms, and all forest products.

Q. I'm going to direct my question to your wholesaling of lumber. Where do you buy your lumber for future sales? In what part of the country?

A. Well, at all origins in Oregon, Washington, and California.

Q. Do you buy lumber at any points on the SP&S, the Oregon Electric, or the Oregon Trunk Railway?

A. Yes, sir, we do.

Q. On all three of them?

A. Yes, sir, all three of them.

Q. And what is your sales area?

A. It varies. It extends all over the country, in fact.

Q. Is the pattern of your sales in general the same as [fol. 654] other lumber wholesalers?

A. I would say so.

Q. Who are located in this part of the country?
A. Yes, sir.

Exam. Dishman: Did you state what your position is with the company?
The Witness: I'm the Traffic Manager.

By Mr. Maguire:

Q. What is the situation—let me strike that.
Do you deal in so-called transit cars, or largely on firm orders?
A. Firm orders, sir.
Q. Do you sell in the State of Montana?
A. Yes, sir.
Q. Do you know whether it is possible for you to fill orders for Montana from mills located on the SP&S?
A. We have had some difficulties on some points, to local Milwaukee points.
Q. And would you state the reason for that difficulty?
A. The absence of through rates in the tariff.
Q. Now, will you state whether or not it is a convenient safeguard to be able to divert any refused shipments from any point, at any point on any railroad to the larger markets?
A. Oh, absolutely, yes, it is a distinct advantage.
Q. Do you know generally what rates there are in effect from points on the SP&S, with the exception of the Santiam [fol. 655] branch, as it has sometimes been called here, to points on the Milwaukee east of Mobridge, South Dakota?
A. I believe they have through rates to points east of Mobridge.
Q. Do you know whether those rates apply merely to Milwaukee points on the Milwaukee Road, or whether they apply to points on connections, from the SP&S?
A. I believe there are a few exceptions to points east of Mobridge. However, to most of the points, I believe the rates are the same.
Q. Well, are they restricted in their application to the Milwaukee Road or not?
A. I wonder if you would repeat that.
Q. I said: Are the rates from the SP&S via Spokane

to points on the Milwaukee east of Mobridge restricted to points on the Milwaukee Railroad?

A. No, sir, I don't believe they are.

Exam. Dishman: Would you speak just a little louder, please?

The Witness: Yes.

Exam. Dishman: I don't think they're hearing you back here.

By Mr. Maguire:

Q. I'm not going to start an argument with you at this time, Mr. Linstad.

A. Without the tariffs here, it's very hard to check it out in a particular case.

Q. Yes, I realize it's hard to quote rates off the cuff. So, I'm not criticizing you at all about that.

[fol. 656] Mr. Rockwood: Don't impeach your own witness, Mr. Maguire.

Mr. Maguire: I'm not going to impeach him. I'm going to help him.

By Mr. Maguire:

Q. Now, Mr. Linstad, if it should be—

Mr. Rockwood: Mr. Examiner, he's had an answer, and I object to—

Mr. Maguire: I'm not going to argue with him about that either.

Mr. Rockwood: May I make a remark?

Mr. Maguire: Surely, you may make a remark.

Mr. Rockwood: He has an answer, which, obviously, he didn't like, and now he's trying to dress up the witness by leading questions, and I object to leading questions.

Mr. Maguire: Would you quote the leading question that I asked him?

Mr. Rockwood: I'm just objecting in advance, trying—

Exam. Dishman: Let's have the question first.

Mr. Rockwood: —trying to prevent the commission by you of crimes against the laws of evidence, which I anticipate are about to be committed.

Exam. Dishman: Let's hear the question.

Mr. Maguire: I'm not going to lead him.

The Witness: I believe I was confused with the question.

Exam. Dishman: You were?

The Witness: Yes, sir.

[fol. 657] Exam. Dishman: In what respect?

The Witness: I ask it to be repeated, and I believe that I was in error possibly.

Exam. Dishman: Well, you understand what the question is?

The Witness: I wonder if you'd repeat it.

Mr. Maguire: Yes.

Mr. Rockwood: There is no question pending.

Mr. Maguire: There's a question that he asked me to repeat, and I will be very happy to repeat it.

Mr. Rockwood: No; let's have the Reporter read it back.

(Question read.)

By Mr. Maguire:

Q. Is that the question you wish to have repeated to you?

A. That's right.

Q. Would you like to answer it again?

A. I'd answer that by saying that it's very difficult to answer that without the tariff in front of me.

Exam. Dishman: Well, is it your answer that you don't know?

The Witness: I don't know without the proper tariff to refer to to substantiate the answer.

By Mr. Maguire:

Q. Now, Mr. Linstad, if—and I am not suggesting to you whether there is or isn't—if those rates are restricted insofar as application is concerned to points on the Milwaukee Railroad, if that is the case, would it be desirable from the point of view of your business to have rates estab-[fol. 658] lished through Spokane via the Milwaukee to points, not only on the Milwaukee Railroad, but also upon its connections?

A. Yes, I believe it would.

Q. And in the wholesale lumber business, will you state the desirability or undesirability, as the case may be, of having both purchase and sales areas as little restricted as possible by limitations in rates or routings?

A. Well, it's purely a competitive market, as you know, on lumber in buying a specific order, and most of our sales are on firm orders. It is advantageous to be able to buy anywhere at any origin, from any origin point.

Q. Is it possible for you to go to any mill picked at random and get the lumber of the grade, specifications, and other characteristics that are needed to fill any one particular order?

A. No, sir.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. Does your company operate a pole yard on the Keasey branch of the SP&S?

Mr. Maguire: Now, just a moment, please. That is objected to, Mr. Examiner, for the reason that I stated at the outset that my examination of this witness was going to be restricted to his lumber wholesaling activities; not to his pole yard, cross arm plant, or anything else. There is no testimony in regarding any pole yard. I did not question [fol. 659] him on it, and I did not intend to.

Mr. Rockwood: I would like to have the answer.

Exam. Dishman: For what purpose, Mr. Rockwood?

Mr. Rockwood: To find out really what the basis of his complaint is here as he appears before us.

Mr. Maguire: He's not complaining about poles. I didn't ask him about poles.

Exam. Dishman: Well, let the witness—what are you complaining about?

The Witness: What are we complaining about?

Exam. Dishman: Yes.

The Witness: We would like to have flexible routings from points on the OE and SP&S to Milwaukee points.

Exam. Djshman: On what type of traffic?
The Witness: On lumber.

By Mr. Rockwood:

Q. Would you like to have it on poles?

Mr. Maguire: Now, is he your witness now?
Mr. Rockwood: He's still your witness.
The Witness: I believe we already have it on poles.

By Mr. Rockwood:

Q. You have it on poles?
A. However, I'm here to testify on lumber.
Q. That's what—well, have you got all the rates you want on poles?

Mr. Maguire: Now, just a moment. Let me finish my—
Mr. Rockwood: Let me explain why I think this is ma-
[fol. 660] terial. This witness is in here complaining of rates on lumber, and I want to find out really what and how detailed his information is as to rates on lumber, what he's complaining about.
Mr. Maguire: If you want to find out about his rates on lumber, I would suggest that it is not necessary to ask about poles, which are produced at different places and are governed by not the same conditions as his lumber shipments.
Exam. Dishman: The witness says he's interested in lumber only. So, the cross examination should go to that.

By Mr. Rockwood:

Q. May I ask this: Do you know whether the rates on lumber and poles are the same?
A. No, sir, they aren't to certain eastern territory.
Q. What eastern territory?
A. Blanket territory.
Q. Blanket territory is east of what?
A. East of Chicago generally.
Q. Are they the same to territory west of Chicago, do you know?

Mr. Maguire: This is objected to.

Mr. Rockwood: I just asked him if he knew.

Mr. Maguire: I object to that upon the ground it's improper cross examination.

Exam. Dishman: On the ground that the witness did not testify in his direct examination?

Mr. Maguire: He made no reference whatever to poles, and his testimony was specifically restricted to lumber.

[fol. 661] Exam. Dishman: Well, the witness says he's here complaining about lumber only.

Mr. Rockwood: I make the witness my own.

By Mr. Rockwood:

Q. Do you operate a pole yard on the Keasey branch of the SP&S?

A. Will you define the Keasey branch, sir?

Q. Extending out through Vernonia, North Plains.

A. We don't own the pole yard, sir.

Q. Do you sell out of a pole yard at that location?

A. Yes, sir, we do.

Q. And do you know what rates apply on poles west of Mobridge, South Dakota, on the Milwaukee?

A. What rates—will you define that?

Q. Do you know whether they're joint through rates, or some other basis, to points on the Milwaukee west of Mobridge?

A. Well, offhand, we don't have too much occasion to check it out on poles.

Q. Do you know what the situation is with respect to the rates on lumber? Now, you're no longer my witness. With respect to rates on lumber from points on the Vernonia branch of the Union Pacific to points west of Mobridge?

A. Vernonia branch of the Union Pacific?

Q. Via the Milwaukee?

A. You said the Vernonia branch of the Union Pacific.

Q. I misspoke it. Vernonia branch of the SP&S?

[fol. 662] A. To what points, sir?

Q. To points on the Milwaukee west of Mobridge?

A. West of Mobridge, the Vernonia rate is a maximum. It holds for most intermediate origin points.

Q. And applies at what destination territory on the Milwaukee?

A. I can't say that offhand, sir, without checking them out in the tariff. It's very general.

Q. Well, it does apply to some territory west of Mobridge, does it not?

A. It may. I can't say specifically without—

Q. You can't say whether it does or not?

A. I can't say whether it's—

Q. You can't say—

Mr. Maguire: Just a minute. Let the witness answer in his own way without putting what you want into his own mouth.

Exam. Dishman: Were you through?

The Witness: I'm through.

Mr. Maguire: I understood the witness to say he could not tell without checking the tariff.

Exam. Dishman: What is your answer?

The Witness: That is my answer. That's exactly what I said.

By Mr. Rockwood:

Q. As a matter of fact, Mr. Linstad, and I'm not surprised that the fact is true, in the lumber wholesaling business, it's very difficult to keep in mind a complex rate adjustment applying from points on the Oregon Electric, or [fol. 663] points on the SP&S, or points on the Oregon Trunk, to destinations throughout the United States; in almost all cases before you feel qualified to give an answer, you would want to look at the tariff, isn't that right?

A. That's right, sir.

Q. And then the sum and substance of it is that, without purporting to have detailed information as to the rate adjustment, you generally in your business want wide open rates, wide open routes at joint through rates practically uniformly throughout the United States to the territory in which you sell? That's about it, isn't it?

A. The answer would be: Yes.

Q. And to the extent that you don't have it, you're here complaining?

A. On lumber, yes.

Mr. Rockwood: That's all.

Exam. Dishman: Any more cross examination?

(No response.)

Exam. Dishman: Anything more, Mr. Maguire?

Mr. Maguire: Nothing more.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: Pursuant to Mr. Titus' request, he asked to present his testimony at this time, as I told you and him before.

Exam. Dishman: All right. Is Mr. Titus in the room?

[fol. 664] Mr. Titus: Yes, sir.

Exam. Dishman: Mr. Titus, have you filed a petition for intervention?

Mr. Titus: Yes.

Exam. Dishman: Was it accepted?

Mr. Titus: A ruling had not been made when I left.

Exam. Dishman: Do you want to be sworn and appear as a witness now?

Mr. Titus: I want to appear and present a statement as intervening.

Exam. Dishman: Not as testimony? You just want to state your position? If you want to offer testimony, you can be sworn as a witness.

Mr. Titus: I want to present this as testimony.

R. T. Titus was sworn and testified as follows:

Direct examination.

Exam. Dishman: Before you begin, I will ask you what your position is as an intervenor. Are you in support of the complainant, or what is your position?

The Witness: Yes.

Exam. Dishman: In support of the complainant?

The Witness: That's correct.

Exam. Dishman: All right, proceed, Mr. Titus.

The Witness: My name is R. T. Titus. I am the Execu-[fol. 665] tive Vice President of Western Forest Industries Association, with offices in the Henry Building, Portland, Oregon.

I am not a traffic expert, but have had nearly 30 years experience in lumber trade association work, concerned largely with the marketing of west coast lumber in all parts of the United States.

Our association has intervened in this proceeding because we are convinced that it is to our interest and to that of other producers and distributors of lumber and other forest products to have joint through routes and rates via all gateways which permit interchange of freight traffic between different carriers. Specifically, we believe that establishment of the proposed competitive through routes and joint through rates, charges, transit privileges, and other services, via Spokane, Washington, would provide better transportation service and greater sales opportunities to our members and other shippers of forest products.

The members of Western Forest Industries Association include loggers, sawmill operators, piling producers, remanufacturers, and wholesale distributors of lumber in several of the western States. A number of these members have plants located on the SP&S, the OE, and the OT lines in western Oregon.

The marketing of western lumber and timber products is an operation which requires the most flexible, liberal, and unrestricted routing, together with the privileges of [fol. 666] diversion, and other transit privileges, such as milling, treating, and storage in transit, stop-off to complete loading, or to partially unload, and the like.

The utmost freedom of movement through the various gateways and economical transportation cost resulting from competitive through rates are necessary for the well being of the lumber industry of the Pacific northwest, for a number of reasons, and these include the following:

1. Production of forest products in this territory greatly exceeds local needs. Hence, the bulk of it must be marketed elsewhere, principally in the midwestern and eastern States.

2. Lumber from the Pacific northwest is sold in competition with lumber produced in the southern States, the

northeast, the lake States, California, Canada, and elsewhere.

3. The center of western lumber production is constantly shifting. A few years ago, the State of Washington was the No. 1 producer. Today, Oregon is in the lead with the greatest concentration of manufacturing plants in the western half of the State, particularly the area served by the SP&S and the OE, and, to a lesser extent, that served by the OT.

4. The lumber market is extremely unpredictable with demand and prices fluctuating rapidly from week to week and from day to day. Similarly, the areas of greatest sales potential shift from week to week and even from day to day, thus necessitating the diversion of cars from a [fol. 667] weakening market to one which shows greater strength.

5. In recent years, retail lumber yards, the best customers of western lumber producers, have developed the practice of replenishing their stocks at frequent intervals, instead of buying heavily once or twice a year. To meet this demand and also to some extent to avoid cancelation of firm orders by purchasers, when mills are sometimes prevented from making shipment when specified because of car shortages, there has developed the custom of loading and shipping so-called transit cars, which are billed to a convenient junction point in the midwest or east. The seller, usually a wholesaler, looks for a buyer, and, when one is found, the transit is then diverted to his place of business. This method of merchandising necessitates flexible routing, and, obviously, shippers are reluctant to send a transit car by a route which does not provide competitive through rates. In this connection, I should point out that most members of Western Forest Industries Association are not large enough to have their own sales organizations and must rely largely upon wholesalers, such as those who engage in transit shipping, to sell their output.

Establishment of the proposed routes and competitive joint through rates would also permit shippers of lumber from points on the SP&S to make delivery of partial loads

to many of the smaller retail yards located along the lines of the Milwaukee, provided the remainder of the car [fol. 668] could be forwarded to Chicago or south and east thereof, for disposition:

Unless and until these rates and routes are established, producers and shippers of lumber on the SP&S cannot economically participate in the partial load business.

The SP&S does maintain joint through rates via Spokane with the GN and NP to Minnesota Transfer, from which open routing is available via all routes to the east, but there are certain areas in Montana, North Dakota, South Dakota, and southwestern Minnesota, which shippers cannot reach without paying penalties in the form of arbitraries or combination rates. The territories in question could be reached via the Milwaukee line.

There are no through rates whatever from points on the Santiam branch of the SP&S to any point on the Milwaukee system. I think I should interpolate there that throughout I'm talking about lumber rates. I don't know what the other rates might be.

From all points except on the Santiam branch, where several of our members are located, SP&S shippers presently have rates via Spokane to the Milwaukee territory east, but not west of Mobridge, South Dakota, with the exception that there are rates from Vernonia to the territory between Missoula and Mobridge. These rates may not be used for shipments to various markets in Minnesota and Wisconsin, nor to Des Moines, Iowa, Chicago, or territories south and east thereof.

Lumber shippers in western Oregon served by the SP, as well as the SP&S, have rates SP to Portland, UP to [fol. 669] Marengo, and then Milwaukee, but these do not extend south of the Chicago-Omaha line, nor to points east of Chicago, or north of the Ohio River except via routes across the lake—I mean—Lake Michigan, which entail higher costs.

Even these restrictions on routing, while less than via SP&S and Milwaukee, are sufficient to discourage routing of transit cars to Milwaukee territory. Furthermore, the variable supply of cars to mills served by both the SP and the SP&S systems interferes with the above routing

because in those instances, when the only cars available are those from the OE, for example, use of the SP, UP route is precluded. The result may be loss of sales.

As mentioned previously, a large percentage of the producer members of Western Forest Industries Association and other manufacturers of forest products on the SP&S system dispose of their products through wholesalers. Wholesalers generally are reluctant to ship lumber into a territory or by a route which does not provide competitive through rates.

Presently, many wholesalers make no effort to sell lumber produced at mills on the SP&S in the Milwaukee territory west of Minneapolis and St. Paul, because, if they use existing routes through Minnesota Transfer, they must pay extra freight charges, and, if they ship via Spokane, Milwaukee, they cannot move the car out of the Milwaukee local territory without paying higher rates.

[fol. 670] Wholesalers and others want to ship, not only via carriers in question, but want competitive through rates applicable to the carrier's connections also. This is important, not only in the case of transit cars referred to previously, but in case lumber destined to a certain customer is undeliverable or rejected for some reason at destination. Without the freedom to divert the car to other markets, the shipper may have to dispose of the lumber locally at a substantial loss.

Under normal conditions, the marketing of lumber is a highly competitive business with the margin of profit so narrow that the distributor cannot absorb penalties in the way of increased costs necessitated in reaching areas where competitive through rates and routes do not exist.

Joint rates and through routes, on the other hand, facilitate the unrestricted marketing of lumber products to the advantage of both seller and producer.

The proposed rates and necessary routes, set forth in the complaint in this proceeding, if granted, would be desirable in the interest of the producers and wholesalers of lumber and other forest products located on the SP&S system, and of the industrial users, retail lumber dealers and their customers on the lines served by the complainant.

That's the end of our statement.

Exam. Dishman: You have no other statement to make?

The Witness: No, no other statement.

[fol. 671] Exam. Dishman: Any questions, Mr. Maguire?

Mr. Maguire: Yes, I have one question.

By Mr. Maguire:

Q. Mr. Titus, will you refer to the first whole paragraph above the lower part of Page 2, at the bottom of Page 2, where you're talking about routes across Lake Michigan?

A. I've got it in a different—here it is.

Q. Yes, that's the sentence I'm talking about. You state there that lumber shippers in western Oregon served by the Southern Pacific, as well as the SP&S, have rates SP to Portland, UP to Marengo, and then Milwaukee, but these do not extend south of the Chicago-Omaha line, nor to points east of Chicago and north of the Ohio River except via routes across Lake Michigan, which entail higher costs.

Do you mean by that that, if they use the cross lake route, that it is more expensive? I'm just trying to get what you did mean by that as to the higher costs.

A. Well, the higher costs may be not just your rate. It may be other things involved. It may be the delay in time. It takes longer. When I'm talking about costs, I meant costs to the shipper in the terms of his entire transportation cost, plus the length of time that it takes to receive the material.

Q. I see. You did not refer to the difference in rates?

A. No, sir. I see now it looks as though that was intended, but that wasn't intended.

Mr. Maguire: I see. That's all I have.

[fol. 672] Cross examination.

By Mr. Rockwood:

Q. What do you know as to the fact as to speed of service by car ferry across Lake Michigan? Is that route faster or slower than movement through the Chicago terminals? Do you know?

A. I do not know personally, no. It's just hearsay.

Q. Then, in the statement that you talked about a moment ago, the delay in using the lake route—

A. I'm told by members of our association, who do use that, that that is true.

Q. As a matter of fact, on these roller cars, some of your shippers or a good many of your shippers like a little delay, don't they?

A. Yes, on rollers, they do.

Q. In many instances, a delay gives them that much more time to dispose of the car in transit?

A. That's correct.

Q. And many of your shippers using these roller cars purposely select circuitous routes, which may be open under the tariff, for the very purpose of obtaining delay, don't they?

A. Yes.

Q. And that, of course, keeps the car tied up longer than if the car moved over the direct route without delay, is that correct?

A. Well, obviously.

Q. And to that extent contributes to car shortages in the [fol. 673] Pacific northwest, of which your members complain from time to time, isn't that correct?

A. I would have to question that assumption. I don't believe that that contributes materially to the car shortages, no.

Q. It doesn't contribute materially? Does it contribute to the general tightening of car supply throughout the United States if lumber shippers using roller cars purposely delay those cars in transit?

A. It would make some difference, yes.

Q. And is not an economical practice insofar as car supply is concerned?

A. Well, I wouldn't know how to answer that because there are so many other factors involved in the utilization of cars that I couldn't say that it was or was not, from that one standpoint of the delay in transit.

Q. You may think it's desirable to your wholesalers to have that privilege, but it does tend to limit the car supply, does it not?

A. In certain instances. On the other hand, there are many times when the shippers in the western part of Oregon have a car shortage or fear one coming, and, if they store their lumber and hold it until they have firm orders, and then a car shortage develops, they're stuck. They cannot move their lumber.

So, many of them prefer to load out every day's cut into transit cars, figuring that, if they once get moving, they won't have to worry about a car shortage on that particular lumber.

[fol. 674] Q. What road in western Oregon has had—has been criticized the most in recent years with respect to car supply? Not the SP&S, has it?

A. Not the SP&S, no, sir.

Q. As far as the Oregon Electric is concerned, there has been no serious complaint of car shortage in recent years?

A. No, sir.

Q. For lumber loading?

A. No.

Q. Is this SP&S, Milwaukee route the only one in the Pacific northwest over which joint through rates apply—I mean of those two railroads—is that the only place in the United States, in the Pacific northwest, where joint through rates do not apply?

A. No.

Q. There are lots of others?

A. Yes.

Q. And you would like to have them opened up too, all of them?

A. Yes, sir.

Q. And the gist of your position is that you object and consider it uneconomical from the point of view of your members any limitation on routing of lumber from any point in the Pacific northwest to any point in the United States?

A. We do, yes.

Mr. Rockwood: That's all.

Mr. Maguire: I have another question.

[fol. 675] Redirect examination.

By Mr. Maguire:

Q. Mr. Titus, have you ever heard of any transit wholesaler using this cross lake route unless the car had already been sold some place in Michigan or somewhere handy to the eastern terminus of the cross lake route?

A. I wouldn't know what the conditions were. I know that they have used them, but I wouldn't know what the reasons were on that.

Mr. Maguire: Well, I won't tell you.

Mr. Rockwood: Just a minute.

Recross examination.

By Mr. Rockwood:

Q. Did you ever on behalf of your association file an application with the Oregon Electric, or the SP&S, or the Oregon Trunk, or with any rate bureau, for joint through rates, which the Milwaukee is seeking in this case?

A. No.

Q. Did you ever file with any rate bureau or any railroad any request for the establishment of any joint through rates on lumber and allied products from the Pacific northwest where joint through rates did not exist?

A. No, we never filed the original application.

Q. When did you first hear of this case?

A. Oh, about—I should think—I would guess about six months ago.

Q. Were you approached by the Milwaukee?

[fol. 676] A. No. We were approached by both representatives of the Milwaukee and the SP&S, and—

Q. You talked about—

Mr. Maguire: Just a minute. Let him answer the question, please. Don't drown him out.

The Witness: I say, yes, we were approached by both representatives of the Milwaukee and the SP&S.

By Mr. Rockwood:

Q. Who got there first?

A. The Milwaukee.

Q. Did they give you some literature to read?

A. Yes.

Q. Did they give you the Draver pamphlet?

A. I don't know as to what you refer, the Draver pamphlet. They gave us a description of what was proposed to be asked.

Q. Did you get a printed copy of the complaint?

A. Yes.

Q. From them? Before the complaint was filed?

A. No. At least, it had a number on it. So, I assume it must have been filed.

Q. It had a docket number on it. That's a safe guess.

A. Yes.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. The SP&S had the last word then, I gather, did they, if we got there first?

[fol. 677] A. Well, they called—they were the last ones to talk with us, yes.

Q. And then after you had heard both sides, did your organization make up its mind which way it wanted to go, if any way, in this proceeding?

A. They didn't make up their minds until after they had heard.

Mr. Rockwood: There was a point raised on redirect examination.

Recross examination.

By Mr. Rockwood:

Q. You say your organization made up its mind. When did the organization make up its mind?

A. Well, the orders to me as Executive Vice President to intervene in the case were given to me on the 19th of June.

Q. Was that the result of a meeting of your Board of Directors?

A. Yes.

Q. Do you have a copy of the resolution adopted by the Directors?

A. I don't have it with me, no.

Q. Was there a formal resolution adopted?

A. Yes.

Q. How many Directors were present at that meeting?

A. Seven.

Q. Who were they?

A. Well, the—

Mr. Maguire: Just a moment. I don't believe, Mr. Examiner, that it's going to help anyway in any way for [fol. 678] Counsel to know just who was there, and the reason I say that is this, that I think it's perfectly proper to ask how many were there, and whether that was a quorum of the Board, but some of these gentlemen are shippers and industries located upon some of the defendant or intervening lines, and I do not think it's fair to expose them to any embarrassment as a result of the action taken by the association.

Exam. Dishman: Do you feel the same way, Mr. Witness?

The Witness: I was about to say that I didn't care to give the names.

By Mr. Rockwood:

Q. You refuse to give the names?

A. Unless I'm instructed to by the Examiner.

Exam. Dishman: He says he doesn't care to give the names.

By Mr. Rockwood:

Q. May I ask this: Was the vote unanimous?

A. No.

Q. There were seven present. How many voted in favor of it, and how many against it?

A. I can't recall.

Mr. Maguire: Just a minute.
Mr. Rockwood: I haven't asked for any names yet.

By Mr. Rockwood:

Q. You don't recall?
A. No.
Q. Will you please—was the vote recorded? The number? I'm not asking for names now.
A. Yes.
[fol. 679] Q. Could you confer with your office and give us this afternoon the vote, whether it was six to one, or five to two, or four to three, or what it was?
A. I could.

Mr. Maguire: I object to that matter being introduced into this proceeding, Mr. Examiner. The fact is that the organization—the Board of Directors by a majority vote—I don't know what the vote was. I know it wasn't unanimous. I don't know if it was six to one, or what it was.
Mr. Rockwood: Neither do I.
Mr. Maguire: But the measure of the vote, I think, has no bearing whatever, because the Directors determine the policy of the association.
Exam. Dishman: And by majority vote?
Mr. Maguire: By majority vote.
Exam. Dishman: Well, I certainly won't instruct the witness to supply that information if he doesn't want to do it.
The Witness: I have no objection to telling them the number after I ascertain it. I do object to giving the names.
Exam. Dishman: Have you any more questions?
Mr. Maguire: In view of the fact that Mr. Titus is willing to give you the number, I'll withdraw the objection to it myself.
Mr. Rockwood: I don't know what the number was.
Exam. Dishman: Off the record.

[fol. 680] (Discussion off the record.)

Exam. Dishman: Are there any more questions?
Mr. Rockwood: No.
Mr. Maguire: Nothing, Mr. Examiner.

Exam. Dishman: You're excused.

(Witness excused.)

Exam. Dishman: We'll take a recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please.

Mr. Maguire: The next witness is Mr. L. L. Pierce.

Mr. Examiner, before proceeding with the examination of Mr. Pierce, there was one bit of unfinished business, namely, the request upon Mr. Titus to furnish the vote, not by names, but by numbers, of the Board of Directors of his organization.

Mr. Titus has the data in his office, and, if he is not here at the close of the hearing, I would request that he be given authority to furnish the number of Directors present, the number voting, and the result of the vote at the meeting concerning which Mr. Rockwood questioned him, and to send that in an extra exhibit in exhibit form.

Exam. Dishman: Well, the Examiner really doesn't see any relevance to that matter, but, if it's requested and both sides want it, why, I won't rule against it.

Mr. Maguire: Maybe Mr. Rockwood doesn't want it now.

Mr. Rockwood: If he gives the number and names, I'm [fol. 681] perfectly willing it should come in, as you suggest, but, if he's simply giving part of the information I requested, I object to his furnishing it unless he's present to be cross examined.

Mr. Maguire: We'll just let it rest then.

Exam. Dishman: All right.

L. L. Pierce was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Will you state your name, please?
A. L. L. Pierce.
Q. Where do you live, Mr. Pierce?
A. Eugene, Oregon.

Q. And what is your business?

A. Manufacture and wholesale of lumber.

Q. You live at Eugene, Oregon?

A. That's right.

Q. And you're engaged in the manufacture and wholesaling of lumber?

A. Yes, sir.

Q. And with what concern are you associated?

A. Fairhurst Lumber Company of Oregon, and Fairhurst Lumber Company of Idaho.

Q. F-a-i-r-h-u-r-s-t?

A. Yes, Fairhurst.

Q. And in what capacity are you employed at that com-
[fol. 682] pany, or those companies, rather?

A. I'm the Sales Manager and General Manager.

Q. For both the Oregon and the Idaho operation?

A. Sales Manager of the Fairhurst of Idaho, and both capacities of Oregon.

Q. And where do these—are these companies affiliated or under the same ownership?

A. Yes.

Q. And where do you have—does your company have plants for the manufacture of lumber?

A. At Toledo, Oregon, and up until very recently at Coquille. We just a couple of weeks ago sold that. We also have a plant that we control at Yoncalla—

Mr. Rockwood: At where?

The Witness: Yoncalla, Oregon.

Mr. Rockwood: How do you spell that?

The Witness: Y-o-n-c-o-l-l-a or -a-l-l-a.

Mr. Maguire: I don't like to contradict my own witness, but I think it's Y-o-n-c-a-l-l-a.

The Witness: That's right. I write it about 10 times a day.

By Mr. Maguire:

Q. And does the Fairhurst Lumber Company of Idaho have a plant?

A. Yes, we have.

Q. And where is that located?

A. At Santa, Idaho; just outside of Santa, Idaho.

[fol. 683] Q. And is Santa, Idaho, a local point on the Milwaukee Railroad?

A. I believe it is.

Q. And with regard to your wholesaling operations, where, in general, do you buy lumber for resale? In what States?

A. Well, Oregon principally.

Q. And do you buy any lumber from mills located on the Oregon Electric and Oregon Trunk Lines?

A. Yes, we do.

Q. Do you buy from any located upon the SP&S proper?

A. Yes, we do.

Q. And where are the mills which are located upon the SP&S proper that you buy from? Can you recall?

A. Well, I haven't particularly paid too much attention between the OE and the SP&S, but I know that we do have some originating from Sweet Home and through that area, and many cars in the Eugene area that originate on the OE, and that would be it.

Q. The Sweet Home area is served by a branch, is it not, that runs from Albany out to Dollar and some other little point in there?

A. It goes up through Lebanon, Sweet Home, and up through that way.

Q. Yes, I think that sufficiently identifies it, and you say you buy from mills in the Eugene area as well?

A. Yes.

[fol. 684] Q. In your merchandising of lumber, do you either complete loading in transit at the present time, or do you wish to do so in the future if it can be done?

A. Complete loading where?

Q. Stop to complete loading, say, at your mill at Santa, Idaho?

A. Yes, we would like to.

Q. Are you able to do it at the present time under the present rate adjustment?

A. Not satisfactorily. I believe it's a combination rate that puts us in—at least in certain areas we're not competitive through that.

Q. And that is on shipments that originate on the SP&S and stop to complete loading at Santa?

A. That's right.

Q. When I say "SP&S", I include the Oregon Electric and Oregon Trunk as well.

Would it be a convenience, or would it be desirable to the interests of your company if joint through rates were to become effective from points on the SP&S system via Spokane, thence via Milwaukee, with respect to the stop to complete loading at Santa?

A. You mean by that that it would be—it would then be competitive with the privilege that we have now, for example, in this area, to stop over to complete loading?

Q. Yes, at competitive rates?

A. Yes, certainly.

[fol. 685] Q. What is the average volume of—in the number of cars per year— hat your concern ships out from the area served by the SP&S, the Oregon Electric, and Oregon Trunk, would you say?

A. From that area?

Q. Yes.

A. Well, we ship in the neighborhood of 75 to 100 cars a month.

Q. Now, when you get—strike that, please.

Do you engage in filling firm orders, or do you also engage in the transit method of marketing?

A. Both.

Q. Both. About what proportion of each would you say?

A. It's been about half and half recently for the last several months.

Q. And when you secure an order for lumber, can you always go to any mill you might pick out and get—readily get lumber of the specifications, lengths, and general description that is ordered by the customer?

A. No. That's impossible.

Q. Would you state whether or not it would be advantageous to the conduct of your business if you had competitive rates from the mills from which you buy to your marketing area, so that you could go without rate penalty

and purchase at any mill that happened to have a supply of the lumber that you needed to fill your orders? Would that be an advantage?

A. Well, yes.

[fol. 686] Q. Do you know what the situation is with respect to the through rates which now exist via the SP&S to Spokane, and thence via the Milwaukee, with respect to the ability of a shipper to divert off the line of the Milwaukee?

A. Well, as I understand it, in certain areas to work a car that we would want to ship, for example, from the Eugene area, originating on the OE, up through Spokane onto the Milwaukee, there are certain areas served by the Milwaukee we couldn't get to on the through rate that we have to have in order to be competitive. We run into a combination rate that makes our freight higher, and, therefore, almost in some cases prohibits us from transiting cars with the expectation of selling in certain areas.

Q. And will you state whether or not those areas include points on the Milwaukee, or off the Milwaukee on the Milwaukee connections? Do you know whether you can divert from the Milwaukee to connections of the Milwaukee on these SP&S through rates?

A. I don't believe we can at some places.

Q. I see. Would a line of through rates applicable between the SP&S and the Milwaukee and its connections on a competitive basis with diversion privileges over connections of the Milwaukee be desirable or to the benefit of your business?

A. Surely would.

Mr. Maguire: I have no further questions. You may cross examine.

[fol. 687] Cross examination.

By Mr. Rockwood:

Q. Where is Toledo located?
A. It's over by Newport.
Q. Right on the coast?
A. Yes.
Q. What railroad is it served by?
A. Southern Pacific.

Q. That's the branch line which leaves the valley line at what point?

A. Albany, I believe.

Q. And runs west to the coast?

A. Yes.

Q. Where is Yoncalla?

A. That's about 45 miles south of Eugene.

Q. On the SP?

A. SP.

Q. On the main line of the Southern Pacific?

A. Yes.

Q. And Santa, Idaho, is on the main line of the Milwaukee east of Spokane, is it?

A. Yes.

Q. Can you start a car out of your mill at Toledo on the Southern Pacific and move it east on the Milwaukee via any route?

A. Via the Milwaukee?

Q. Yes.

[fol. 688] A. I don't believe so. In some cases, we can't.

Q. You don't believe so, but in some cases—

A. I don't believe we can in some cases. Let me put it that way.

Q. Do the rates apply out of Toledo, Southern Pacific to Portland, thence Union Pacific to Spokane—or to Marengo, thence Milwaukee? Do you know?

A. Well, most of the cars, in order to go into some of the complications that we have, most of our transit cars that we originate on the SP, we route them SP, UP, usually to Council Bluffs, via Ellis, Kansas, which gives us about as good a coverage as we've been able to secure for our transit cars.

Q. And similarly on cars originating on the Oregon Electric, you ship SP&S, Spokane, then Great Northern or Northern Pacific?

A. That's right.

Q. Which gives you reasonably good coverage?

A. Well, sir, to tell you the truth, we haven't used that route too much, that is a fact, for transit cars. Now, if we're shipping firm orders and that route applies, we're

very happy to put them over that way, which we do on a certain amount of it.

Q. Routing via the Union Pacific to Council Bluffs gives you plenty of time to sell transit cars?

A. Yes. From this area here, we have 19 to 21 days on that, and we—I think you'd find that probably 80 per cent of the transit cars that leave the Eugene area, or central [fol. 689] Oregon, are routed over that route.

Q. Twenty-one days from Eugene to Omaha?

A. To Council Bluffs.

Q. To Council Bluffs, which is right across the river from Omaha?

A. Yes.

Q. That 21 days is a nice, generous allowance of time for you to get the cars sold before they get to Council Bluffs?

A. Sure. On a market like today, you don't need time. I've seen a lot of times when you'd need six months.

Q. Yes, I know, but 21 days—

A. That's right.

Q. Couldn't you get the car to Council Bluffs quicker than in 21 days if you want it there?

A. I believe you could.

Q. Why does it take 21 days to get—

A. Well, I believe it's like a great many of the railroads throw in some junctions, and so forth, and route them via Ellis, Kansas, rather than the direct route, and we find that most all railroads will offer us approximately the same time.

Q. In other words, they come around and say to you, "We can give you 21 days into Omaha, but, if you want it there faster, we can get it there in about six or seven days", is that right?

A. I think that's general knowledge in the transit business.

Q. So, you take the 21 days?

A. Right.

[fol. 690] Q. Is that a general practice in the industry?

A. Yes, sir.

Q. And what does that do to your car supply out here?

A. Well, according to the Southern Pacific, nothing.

Q. On the other hand, it's the Southern Pacific that was

the defendant in a proceeding before the Interstate Commerce Commission involving car shortage?

A. I believe that's right.

Q. And you experienced the consequences of car shortage, did you not, at that time?

A. Yes, sir.

Q. And did the use of 21 days for movement to Council Bluffs have anything to do with the car shortage?

A. I believe it did. I'd venture to say that everyone, except people that transit lumber, would be against the long routing.

Q. Everybody—thank you, that's a very good answer.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Pierce, with regard to this delay in transit, of which Mr. Rockwood so obviously disapproves, what kind of offers do you get from the SP&S and its connections as to arrival time at Minnesota Transfer?

A. Approximately the same.

Q. Approximately the same as the 21 days?

A. Yes. They have several routes that we can use. They [fol. 691] will all run 19 to 21 days by these devious routings, but certain transfer points are not quite as acceptable to us as other ones.

Q. And do the Northern Pacific and the Great Northern and the SP&S cooperate in this delay en route that Mr. Rockwood was asking about, as well as other railroads?

A. I believe that would be true. I think they're all rather anxious to do as much business as they can. It's a little added incentive to give us the privilege of longer routings.

Q. And if there is any tar in the situation, they're all tarred with the same stick, are they?

A. Well, that I really wouldn't—

Q. I won't ask that question. That was merely a facetious remark.

Mr. Rockwood: I didn't hear the facetious remark.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Recross examination.

By Mr. Rockwood:

Q. Will you, for instance, on the Great Northern give us the outline of the so-called devious route that is used over that route for delaying cars?

A. Sir, I personally don't have too much to do with the routing of these cars. There's so many of them I don't attempt to keep track of them. We have a girl that does nothing but route these cars, and I'm not familiar enough [fol. 692] with them to give you a definite answer.

Q. Well, for the Great Northern, for example, you don't know whether there is such a devious routing?

A. Oh, yes, I know there is.

Q. You know there is a devious route?

A. Well, I'm quite sure that we can—whether it's devious—now, your interpretation of the word "devious" is maybe a little different. I would say that I'm sure we could—we can transit a car on the SP&S to the Great Northern to Spokane, that way, probably to the Minnesota Transfer, and it would take about 19 to 21 days.

Now, whether they have to put in a roundabout route in there, I don't know. Maybe it's just that it's a little more mileage on the track and it takes a little longer.

Q. As a matter of fact, isn't the Great Northern the short line from Spokane to Minnesota Transfer?

A. I'm not positive.

Q. And you're not able to say whether there is in the Great Northern tariffs any routing permitted on lumber between Spokane and Minnesota Transfer—

A. If there's what?

Q. Any routing over the Great Northern between Spokane and Minnesota Transfer other than over the main line of that carrier from Spokane to Minnesota Transfer, are you?

A. No. That's right. I certainly am not.

[fol. 693] Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. In other words, do you know whether they route by devious routes in order to be on a competitive delay basis with the other lines, or do they just drag their feet in getting it in there? Do you know which it is?

A. Well, I didn't take the time to think what I had to meet to look at some of these answers, frankly.

Q. Well, all you know then—is it fair to say that all you know then is that they promise you the same delivery time, or time in transit on transit cars that competing lines do?

A. I know that we can go through transit through the Minnesota Transfer and have it within a day or so of the same time we can the other way.

Recross examination.

By Mr. Rockwood:

Q. Did you ever have any promise from any railroad official on that?

A. About what?

Q. That they would give you 21 days from Eugene to Minnesota Transfer? Did you ever have a promise?

A. Oh, you mean from Eugene to the Minnesota Transfer?

Q. Yes. Any promise?

A. Well, we have a great many of the solicitors come around there, and I think you'll find that most all of them will—they won't put it in writing, but they will tell you [fol. 694] they'll do better than the other fellow.

Q. So, as a matter of fact then, it's a matter of competition between carriers to give poor service to the extent that—

A. That is one of the amazing things about the transit company business.

Q. To keep a car under load for, say, three weeks when it might go through in, oh, at the most 10 days?

A. The common practice—if you'd like to have me say this—is, when we transit a car, for example, we send it SP, UP via Council Bluffs, and we sell the car out three days, we can notify the railroad to divert the car and speed it up by approximately 10 days.

Mr. Rockwood: That's all.

Mr. Maguire: I have no more.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Maguire: I believe I have one more witness if I may take a look to see if he's here.

I will not ask for a further recess. The witness who was expected here at 2 o'clock this afternoon has not arrived, and that completes our testimony at this hearing, there being left only the cross examination of Mr. Engel, I believe.

Mr. Rockwood: Mr. Examiner, I suggest that, since there are no other witnesses to be called at this hearing, other than Mr. Engel for cross examination, that we adjourn this [fol. 695] afternoon and resume tomorrow morning to start fresh with him.

I think I can assure the Examiner that without difficulty I will be through before the end of the day tomorrow.

Exam. Dishman: All right, we will now recess until 9:30 tomorrow morning.

(Whereupon, at 4:15 p. m., an adjournment was taken until 9:30 o'clock, a. m., Wednesday, June 30, 1954, at the same place.)

[fol. 698]

Transcript of Proceedings—June 30, 1954

Exam. Dishman: The hearing will come to order, please.

Mr. Maguire: We have no further direct testimony to offer at the Portland hearing, Mr. Examiner, and Mr. Engel is now available for cross examination.

Mr. Rockwood: I'm prepared to cross examine Mr. Engel.

H. O. Engel previously sworn, resumed the stand:

Cross examination.

By Mr. Rockwood:

Q. Do you have before you, Mr. Engel, a set of your Exhibits Nos. 3 to 15, inclusive?

A. I have.

Q. And you have before you a copy of the prepared statement from which you gave your direct testimony?

A. Yes, sir.

Q. I do not intend, Mr. Engel, to cross examine on all subjects as to which the defendants might take exception in your exhibits or your statement. There are some matters on which I may properly cover by rebuttal, rather than attempt to draw out long, complicated explanations of tariffs, which would be difficult in cross examination. So, I will refrain from doing it, but there are some questions I want to ask.

I refer you to your prepared statement on Page 1 under the subject, "Historical—Rates, Trans-Continental". The second paragraph is a complete sentence, which reads:

[fol. 699] "Effective September 10, 1913, single-factor joint through rates via Spokane were established on lumber and other forest products from shipping points on the S. P. & S. Ry., O. E. Ry. and O. T. Ry., which shall hereafter be referred to collectively as the SP&S, to local destination territory . . . " and the significant phrase that I wanted to stress is this phrase, " . . . to local destination territory . . . " Then you say, " . . . on the Milwaukee

east of Mobridge, S.D., as more fully described in ensuing testimony and exhibits."

By the words "local destination territory", you do not mean to imply that those rates apply solely to points on the Milwaukee, served only by the Milwaukee?

A. No, sir. That's a generalization and, as shown by the map—Exhibit 9, I believe—there are also points that are common in many cases.

Q. Sioux City, Iowa, is an example, is it not?

A. I believe that would be a good example.

Q. Which is served by other railroads, and which is competitive with other lines, as well as a station which can be served by the Milwaukee, and you wished that phrase " . . . to local destination territory . . . ", I take it, to be so understood?

A. Yes, sir.

Q. I don't recall whether this—it was an interpolation you made in your testimony, but in the next paragraph of your prepared statement, "Application of rates via Spo-
[fol. 700] kane was and is, however, denied on other traffic and our participation in rates from and to the territory east of the Missouri River on other traffic . . . "—did you interpolate "other than lumber"? That means other than lumber?

A. Well, on other than lumber traffic, yes.

Q. The words "other traffic" means traffic other than lumber traffic?

A. Yes.

Q. On page 2 of your prepared statement under the same general heading, "Historical—Rates, Trans-Continental", you have the paragraph:

"Such denial is contrary to the general concept of trans-continental rate making, which is to provide application at competitive rates from and to points on short-lines in North Coast Territory . . .", and the phrase that is significant is, " . . . short-lines in North Coast Territory . . . "

In referring to short lines, you refer to such as the Pacific Coast Railroad, Spokane International, and Washington, Idaho & Montana Railway Company. Do you consider that

the SP&S is a short line of the same category as the three railroads that you named?

A. In degree. They differ only in degree. I think they are all Class I carriers, and perhaps a better characterization of the SP&S would be that it is an independent line, and not a trans-continental carrier. It is short in compari- [fol. 701] son with the so-called trans-continental carriers.

Q. If the Commission on the proof which will subsequently be offered in this case concludes that the Northern Pacific and the SP&S are roads under common management or control, within the meaning of Section 15(4), and that the Great Northern and the SP&S lines are roads under common management or control, within the meaning of Section 15 (4), then the SP&S ceases to be a short line and becomes, even under your interpretation, a portion of a trans-continental route all the way from Minnesota Transfer to the termini of the SP&S lines in Oregon?

I'm not asking you to say that that's right, but, if the Commission so concludes, you would cease to characterize the SP&S as a short line, is that right?

A. Well, if they were part and parcel of either of the other two lines, I would say that they were a trans-continental carrier as distinguished from a short line.

Q. And by "part and parcel", are you using the phrase roughly to mean under common management or control within the meaning of Section 15(4)?

A. Yes, sir, I would say so.

Mr. Maguire: Pardon me, Mr. Rockwood. May I ask whether, in framing that question, you did not fully quote that particular wording of Section 15(4), and I presume that you wish your question to be understood as relating to 15(4) of the Act as that section actually reads, do you not? [fol. 702] Mr. Rockwood: Why, of course.

Mr. Maguire: Yes. I just wanted to clarify that.

Mr. Rockwood: It is common management or control. It's in the alternative.

Mr. Maguire: The statute will speak for itself, and I just wanted to clarify it. I'm not arguing with you.

Mr. Rockwood: We agree that the statute will speak for itself.

Mr. Maguire: Yes.

By Mr. Rockwood:

Q. On Page 2 of your prepared statement, under the heading, "Historical—Rates, West of Trans-Continental", in the first full paragraph, and particularly the sentence which begins;

"With a few isolated exceptions, the SP&S has not voluntarily joined in any rates . . . ", and so forth. Do you have that before you?

A. Yes.

Q. And you speak of Vernonia, Oregon, forest products from Vernonia, Oregon, as being an exception to the general rate situation, in that rates on forest products do apply from Vernonia, Oregon, on the SP&S, to some points west of Mobridge, South Dakota.

I am correct that Vernonia is the exception?

A. Yes, sir.

Q. Now, have you examined the correspondence of the [fol. 703] Milwaukee to determine the history of the Vernonia rates and the events which occurred in 1914 when the Vernonia rate was established?

A. 1914?

Q. I believe—wasn't the Vernonia rate established—when was it established?

A. I don't think it was established until around about 1932.

Q. You're thinking of the Santiam branch, aren't you?

A. I'm thinking about Vernonia. That's my understanding.

Q. There were no rates west of Mobridge from any point on the SP&S prior to 1932, is that the fact, as you understand it?

A. It is.

Q. All right. Whenever it was established, have you examined the files of the Traffic Department of the Milwaukee to determine the position of the Milwaukee with respect to the rates west of Mobridge from the SP&S points at the time the Vernonia rate was established? Have you —I just ask the question: Have you examined the correspondence?

Mr. Ehlen tells me that you're right. The Vernonia rate was established in 1932. My note was wrong, but have you examined any correspondence of the Milwaukee with respect to rates west of Mobridge from points other than Vernonia?

A. I have reviewed them at different times, yes.

Q. Can you tell us whether or not there is anything to indicate that it was the Milwaukee which declined to participate in more extensive rates on lumber west of Mobridge?

[fol. 704] A. My recollection and understanding of the matter of establishing rates, prior to the filing of the complaint, is that the SP&S made inquiries of us, and there were two situations with which we were confronted.

First was the matter of divisions. I don't recall the exact particulars, but more important was that we indicated to the SP&S that we stood ready to check in a full line of rates on lumber from Vernonia, that we did not feel we could consistently merely establish rates to such points as are on our line in Montana, that we'd just be doing the job piecemeal and creating still a bigger pocket, you might call it, but that we were at all times ready to establish a full line of rates—

Q. From Vernonia?

A. From Vernonia, and, upon so informing the SP&S, they indicated to us that they would close the file, that we needn't consider it any further. I recall that.

Q. That's a subject which may be verified by reference to the correspondence?

A. Oh, yes, I believe so.

Q. And you do not have the correspondence here?

A. I may have it among my papers.

Q. You don't have it here in the hearing room?

A. I may have it. I wouldn't be sure.

Q. See if you have, will you?

A. Well, the letter I had reference to was written by Mr. [fol. 705] R. W. Pickard, Assistant General Freight Agent of the SP&S.

Q. Well, just a minute. I don't want one letter read into the record unless we have the opportunity to check the cor-

respondence which led up to it. I don't want simply Mr. Pickard's final answer, saying the matter shall be dropped, or something like that, whatever it is. I don't know what the letter is.

Mr. Maguire: Might I ask what the question was that Mr. Engel is supposed to answer at this particular time, after having secured the correspondence file?

Mr. Rockwood: Well, what I was interested in was the answer to the fact as to whether in any respect the activities of the Milwaukee at the time the Vernonia rate was established resulted in a limitation of the application of the rate from Vernonia and to any particular territory, rather than to extend to the Vernonia line—to Vernonia additional rates or additional territories, or whether there was any limitation, who was responsible for the limitation to the Vernonia line, rather than making it more extensive.

Mr. Maguire: Well, do you wish the witness—just so we can know what you want here, do you wish the witness, who has the correspondence file before him—I have not seen it—I don't know just which one he has—do you wish the witness to read excerpts from letters, or just what is it you do want from him so we'll know which way to go?

Mr. Rockwood: Well, I do not want excerpts or complete [fol. 706] letters of the final termination of the event. I will be perfectly willing to have him produce and put in all the correspondence relating to that subject, or, if he wants to—if you would like to have him exhibit it to us, I'll tell you what I would like to have in, and possibly I won't require any more than we now have.

Mr. Maguire: Well, in that connection, I might suggest that this being correspondence between the SP&S and the complainant that those files are equally accessible to you, and any exhibits that you wish to draw of those files, you're at liberty to prepare.

I don't propose to put in any exhibits at this time, and I do not propose to do so on cross examination unless a demand is made for it which is sustained by request or direction of the Examiner, because these files are equally accessible to you as they are to me.

Now, then, if you merely want the witness' conclusion from those correspondence files, of course, we're glad to furnish that.

Mr. Rockwood: I don't want to delay this hearing by a long search of correspondence files. It is true we have correspondence on the same subject, and in all the circumstances I will defer further questions and, if I wish to have this developed further, I will present our own correspondence files for the record.

Mr. Maguire: I think that might save considerable fric-
[fol. 707] tion between you and me if we would do it that way, because I think we're working more or less under a misunderstanding as to just exactly what you do want now.

Mr. Rockwood: Possibly.

By Mr. Rockwood:

Q. Will you refer please to your Exhibit No. 4, and your first two blocks in that exhibit under TCFB 18-P or TCFB 28-O—I guess that's capital O, not a zero—28-O, you note the basis of lumber rates, and in both of those you say except from the Santiam, Oregon, branch.

Have you similarly—this is a similar question to what I asked about Vernonia—have you examined the correspondence files to determine why the rates from the Santiam branch were not published on the basis applicable, we'll say, from Albany?

A. Frankly, I couldn't find a single request or proposal from the SP&S to establish rates via Spokane from the Santiam branch.

Q. You searched your files and were unable to find any?

A. That's correct.

Q. Well, I won't ask you to verify the facts which I may be able to prove later.

On the second page of that exhibit, under the final block, NPCFB 25-O, that tariff relates entirely, as it's noted, to intrastate traffic in the State of Washington, does it not?

A. Yes.

Q. And nothing in there extends to any territory east of the Montana-Idaho line, that's correct, is it not?

[fol. 708] A. Naturally.

Q. And in the block in the first column, on Page 2 of your exhibit, under Milwaukee B-7194—

A. What number? I beg your pardon.

Q. CMStP&P B-7194 in the first column of the block on Page 2 of your exhibit—

Mr. Maguire: It's the second block from the bottom, isn't that right?

Mr. Rockwood: That's correct.

The Witness: Oh, sure.

By Mr. Rockwood:

Q. Do the rates shown there also apply to points on the Oregon Trunk via Wishram by virtue of Supplement 53 to Milwaukee ICC B-7194?

A. If so, I couldn't say without looking at the tariff, but, if so, it was an oversight, not including it. I had no intention of shortening the application at all.

Q. And if that is true, it also would apply by intermediate application to all points on the SP&S between Wishram and Spokane, would it not?

A. Oh, yes, it would under the intermediate application.

Q. You don't have that tariff with you?

A. No, sir.

Mr. Maguire: By intermediate application, Mr. Rockwood, do you mean that the rates to the designated destination territory would be held at a maximum at intermediate points?

[fol. 709] Mr. Rockwood: That's right, all points between Wishram and Spokane.

Mr. Maguire: Where the combination rates would be higher, it would be held as a maximum? That was the point of your question, wasn't it?

Mr. Rockwood: I think everybody understands it, Mr. Maguire.

Mr. Maguire: I know, but we'd like to get the record specific on it, is all.

By Mr. Rockwood:

Q. On Page 3 of your prepared statement, under the heading, "Explanatory", wherein you first refer to Exhibit No. 4, that we just referred to—

A. Where I refer to Exhibit 4, that's under the second caption, not under "Explanatory".

Q. Oh, you're right. That's under the caption, "Tariffs Naming Single-Factor Joint Through Rates via Spokane, Wash. between Stations on the SP&S and Stations on and via the Milwaukee".

About the third paragraph under that heading, which begins:

"Although admittedly limited in scope, this section does show that through routes and joint rates have been established and are maintained via the Spokane interchange on all classes of traffic."

Is Exhibit 4 complete to show all joint rates in which the SP&S and the Milwaukee join?

A. Via Spokane, yes, with that exception that you mentioned on the plaster, which I overlooked.

[fol. 710] Q. Well, that Exhibit 4 certainly doesn't show —doesn't include all classes of traffic, does it?

A. I would say so. The main reason I used that term, and I think properly so, is that there are class rates in that second block between Portland and stations on our Metaline Falls line, and everything or anything could move under class rates, so that there are rates on anything that moves.

Q. Isn't it true that the only joint rates applicable to a broad list of commodities are your export and import rates, the only commodity rates applicable?

A. They cover—the export and import tariffs cover practically everything, I believe.

Q. Yes. Well, except for export and import, the joint through commodity rates certainly don't cover all classes of traffic, all kinds of traffic?

A. Not in each particular instance, no, sir. That is not—that's one of our complaints here. We want more rates.

Q. Well, when you say that there are through routes and joint rates on all classes of traffic, it must be understood

that the word "classes" does not mean on all categories of traffic, commodity rates or class rates?

A. It simply means that anything that would be moving via that gateway to the extent that we have the rates, and that would include everything if it should happen to move, regardless of what it would be, for example, via Spokane under the rates referred to.

[fol. 711] Q. When you refer to class rates, you say anything can move on class rates. As a matter of fact, are there any joint class rates except between points on your Metaline Falls branch and points on the SP&S branch?

Mr. Maguire: Allow me to interrupt just a moment. The witness called attention to the fact that under the export and import rates, general commodities are covered.

Mr. Rockwood: That's right.

Mr. Maguire: I just wanted to be sure that that is implicit in your question.

By Mr. Rockwood:

Q. I just wanted to be clear, except for the export and import rates, there are very few joint rates on—joint commodity rates—

Exam. Dishman: Is that your understanding?

The Witness: Yes, sir, that's exactly what I'm trying to portray by this exhibit.

By Mr. Rockwood:

Q. Well, I just didn't want any misunderstanding in connection with your statement that joint rates have been maintained on all classes of traffic. As to class rates themselves, there are no joint class rates except to and from points on your Metaline Falls branch?

A. That is correct. I would have shown them if there was.

Q. Yes, and the Metaline Falls branch, as we have pointed out, is a branch line leaving the Milwaukee shortly east of [fol. 712] Spokane and extending north toward the Canadian border?

A. That's correct.

Q. On the next page of your prepared statement, there is a sentence ending with a clause, ". . . and the eastbound lumber rates apply with limited exceptions to local destinations."

Your answer as to the meaning of that phrase would be the same as that which you discussed before? That does not mean that they apply only to points served solely by the Milwaukee?

A. That is correct. It would be the same explanation, yes.

Q. Same interpretation as before?

A. Yes.

Q. At the end of that paragraph, on Page 4 of your prepared statement, is a clause, ". . . thus conning application of such rates for all practical purposes from or to country points reached only by the Milwaukee", and you're talking about livestock rates, I believe?

A. Yes, sir.

Q. In all cases, the shipper has available from all Milwaukee points, whether reached only by the Milwaukee, or by the Milwaukee and some other railroad, a line via the Marengo route and Union Pacific, as he has via the Great Northern or Northern Pacific to North Portland on the SP&S, or to SP&S and to North Portland, is that right?

A. You're speaking of Montana, or what?

Q. Yes, the same rates that you're talking about in that [fol. 713] paragraph on Page 4, livestock rates?

A. Well, of course, there I'm talking about the 17000 Docket distance scale of rates, and that applies from the entire western district. In other words, the rates run also from points in the Dakotas to Portland, and we do have the distance scale. Naturally, that was complied with, but, in actual publication of those rates, certain groups were set up, and we're not competitive. When I say we can't reach the public livestock market at Portland, for example, from certain points, I mean that we cannot reach it on a competitive basis.

We do have rates, but the shipper would not use them because they're higher.

Q. You do have joint rates via the Union Pacific and Marengo, do you?

A. To—

Q. North Portland?

A. To Portland and much of that territory.

Q. And are they on a higher basis than are published from points in the same area, we'll say, in Montana via the Great Northern and Northern Pacific to North Portland?

A. Yes, sir, they are.

Q. They are higher?

A. No, sir. I say—you asked me if they're the same.

Q. They're the same as published via the Northern Pacific and Great Northern to North Portland?

[fol. 714] A. Yes, sir.

Q. Well, where you have those joint through rates, you can reach points via that route, Union Pacific route, which are served by other carriers than the Milwaukee, can't you?

A. From what point now, please?

Q. From points on the Milwaukee, we'll say, in Montana, which are served by other carriers. The Milwaukee can reach North Portland via the Marengo route, Union Pacific, on the same basis of rates that apply via the Great Northern and the Northern Pacific?

A. Yes.

Q. On Page 5 again—on Exhibit 5, rather, Page 3, the very last item on the page, NPCFB 25-O, those sand and gravel rates apply solely intrastate in Washington?

A. Yes.

Q. In your prepared statement on Page 5, under the heading, "Tariffs Naming Rates from and to SP&S Stations via Spokane, Wash., G.N. Ry. or N.P. Ry.", in the second paragraph, you indicate that the rates off the SP&S apply via the Great Northern and Northern Pacific and connecting lines east of Spokane, and I quote: ". . . throughout the United States and Canada."

You don't mean that there are joint rates over the Northern Pacific to all points in Canada, do you?

A. Not to all points. It would have been very difficult to have delineated the exact scope of the territory, but generally.

[fol. 715] Q. But generally to Canadian points, we'll say, east of Winnipeg?

A. Yes, that's about it.

Q. But not to Canadian points west of Winnipeg?

A. That's my understanding. We're seeking nothing more than that.

Q. In other words, you want as much as the Great Northern and Northern Pacific have, but you're not asking for more in this case than they already have?

A. Comparable adjustment, yes.

Q. You want just as much as they have, is that right?

A. We want equality of treatment.

Q. In other words, you want exactly what they now have, but you are not asking for any more?

Mr. Maguire: I think the question has been answered. He said, "We want equality of treatment." I think that expresses our position in this case.

Mr. Rockwood: I think we understand each other.

Mr. Maguire: I think we do.

By Mr. Rockwood:

Q. Now, on Page 10 of your prepared statement, under the heading, "Application of Rates Between Points on the Union Pacific RR. and Milwaukee and Connections", in the first paragraph, the final sentence is:

"Offhand, it would seem that since the Milwaukee has rates from and to points on the Union Pacific and connec-[fol. 716] tions that it is in a fairly competitive position from and to S.P. & S. territory, but this is only true to a relatively limited extent."

I think we can probably get your definition of "relatively" by developing some facts. That's true with respect to all stations on the Oregon Trunk, isn't it?

A. Rates from the Oregon Trunk, which operates over the same line as the Union Pacific, are, of course, confined to the lumber rates which I mentioned via Spokane. Now, from the Union Pacific, or via the Union Pacific from those same origins, we have rates on traffic generally via Marengo

eastbound to a relatively limited destination territory in the east.

We have rates to Montana points and North and South Dakota, and also east of Mobridge, but they are confined to a relatively limited destination territory.

Q. Well, when you use the term "relatively limited", do you have in mind the fact that all stations on the Oregon Trunk are competitive with the Union Pacific?

A. They serve—they operate over the same rails, I understand.

Q. You had in mind that there are many other stations, several other stations on the SP&S which are likewise served by the Union Pacific?

A. Such as Portland.

Q. Portland, Vancouver, the major population centers served by both? That's true, is it not?

A. Yes.

[fol. 717] Q. And in addition, you have Kennewick, Washington?

A. Kennewick is a common point. I don't know what facilities the SP&S have there, but it's a common point.

Q. It's a common point, is it not? Hooper, Washington?

A. Hooper is on both lines.

Q. Washtucna, Washington?

A. Washtucna is rather peculiar there. It's very similar to a lot of situations we have in Montana in that there is the same name of a station, but one line has facilities and the other doesn't. So, while it is a common station, as far as the name is concerned, I don't know that they both can supply the necessary facilities there.

Q. Do you know whether the Union Pacific cannot supply the same facilities as the SP&S? Do you know?

A. I've been told that they don't have any loading pens there for livestock. I haven't been there personally.

Q. You don't know?

A. I wasn't there.

Mr. Maguire: I think we have testimony to that effect in the record.

By Mr. Rockwood:

Q. What about Ankeny? Is that a common point?

A. I couldn't say for sure.

Q. Isn't it true that by virtue of the joinder by the Southern Pacific and Union Pacific on routes from the Willamette Valley into Portland, and thence east Union Pacific, [fol. 718] all points in the Willamette Valley, which are common to the Oregon Electric and the Southern Pacific, can be reached by the Union Pacific?

A. The Union Pacific has joint rates with the Southern Pacific on its line south of Portland, and many of those points are common as between the SP and the Oregon Electric, but the Union Pacific doesn't join us in the full line of rates from SP points to the east.

Q. Did you ever ask them to?

A. Yes, sir.

Q. And they said no?

A. That's right.

Q. I missed in my enumeration of Washington points Kahlotus. That's in the same category, that is, served by both the Union Pacific and the SP&S, isn't it?

A. Those small points I'm not too familiar with. I'm sorry.

Q. You don't know what originates and terminates at those points?

A. No, sir.

Q. So, you don't know whether the Milwaukee has any occasion to ask for rates to and from Washtucna, for example? You don't know what moves there?

A. Washtucna, I happen to have heard the testimony.

Q. Of one sheepherder?

A. Well, call him a sheepherder. I think he's a pretty substantial farmer.

Q. Rancher, we'll call him then.

[fol. 719] Mr. Lutterman: I think he'd resent that, Mr. Rockwood. He's a pretty substantial fellow.

Mr. Rockwood: I know he is.

By Mr. Rockwood:

Q. Except as you heard the testimony—I don't recall the gentleman's name—the rancher over near Washtucna, who raises sheep and sells sheep, and, we trust, makes money on the sale of sheep, you don't know anything about that traffic to and from Washtucna, I take it?

A. I've never walked over that line of track, but I do know eastern Washington pretty well. I was born over there, and I do know that all that country is very productive, agricultural-wise, and traffic can gravitate to either line, the Union Pacific or the SP&S.

Q. You talk about small points. Isn't it a fact that Washtucna and Kahlotus, that I mentioned, are the largest communities between Pasco and Spokane on the SP&S?

A. When I said small, I meant relatively as compared with Walla Walla.

Q. Or Portland?

A. Or Portland.

Mr. Maguire: Or New York.

Mr. Rockwood: I wouldn't go quite that far, because we're not getting east of Chicago in this case.

By Mr. Rockwood:

Q. You're familiar with the fact, of course, that in the Willamette Valley the major towns, such as Salem, Albany, [fol. 720] Eugene, and several others, are served by both the Southern Pacific and the Oregon Electric?

A. Yes, sir.

Exam. Dishman: I was going to say there's been quite a few references to the Willamette Valley. I don't know whether the area has been described for the record or not.

Mr. Rockwood: I think we'll all agree that the Willamette Valley is the territory in western Washington between the Cascade Mountains and the Coast Range, and that the Willamette River joins the Columbia just north of Portland, Portland being on the Willamette River, and the Oregon Electric lies entirely within that area between the two mountain ranges extending down to Eugene.

Exam. Dishman: Is that your understanding of it?

The Witness: Yes, sir.

Mr. Maguire: And I think we could add this, couldn't we, Mr. Rockwood, that, so far as issues in this case are concerned, we are more principally concerned with that portion of the Willamette Valley which extends from Eugene, the southern terminus of the Oregon Electric, north? Could we say that?

Mr. Rockwood: Well, I don't know. I know I'm not going to admit that. I don't know what use you'd make of it, but the fact is, of course, that the Oregon Electric terminates at Eugene and serves with its own rails no territory south of Eugene, Oregon, which is some 125 miles south of Portland.

[fol. 721] Mr. Maguire: You've expressed that much more ably than I did, and I will accept your expression of it.

Mr. Lutterman: Mr. Rockwood, I think you misspoke yourself. In your original definition, you said "that part of western Washington."

Mr. Rockwood: Western Oregon, of course.

Exam. Dishman: All right, proceed.

By Mr. Rockwood:

Q. Still under this same heading in your prepared statement, "Application of Rates Between Points on the Union Pacific RR. and Milwaukee and Connections," on Page 12 of your prepared statement, you are referring, as I take it here, to the rates which are joint with the Milwaukee and Union Pacific via Marengo and their application on transcontinental traffic.

You say: "The rates to the area east of the Illinois-Indiana border and north of the Ohio and Potomac Rivers are restricted, as I have said, to across-Lake routes north of Chicago, and are, therefore, of very limited practical application."

In the years 1952 or '53, or for both of them if you have the data, can you tell us how many cars of lumber moved eastbound via the Union Pacific, Marengo route?

A. No, sir, I don't have that.

Q. Did you ever look that up?

A. No, sir.

Q. And then, of course, you can't give similar data for [fol. 722] other forest products?

A. No, sir.

Q. And you cannot tell us how many of those cars actually moved across Lake Michigan into the territory north of the Ohio?

A. No, sir.

Q. You know, of course, that that territory north of the Ohio and Potomac east of Lake Michigan is the area of the densest population in the United States?

A. Yes, sir.

Q. And is, of course, a very important market for all the products they use by people, such as lumber? You know it is a very important lumber market?

A. Oh, yes, there's no doubt about it.

Q. And you made no investigation whatsoever to determine the extent to which cars may move via the Marengo route into that territory, or did move via that route into that territory?

A. I had no occasion to in this connection, so I did not.

Q. The fact is, you didn't?

A. I did not, no, sir.

Q. In the next paragraph, you say: "I should also like to point out in this connection that with the exception of the Bend, Ore. branch line . . ."—you mean there the Oregon Trunk?

A. That's correct.

Q. From Wishram extending to Bend?

A. Yes.

[fol. 723] Q. I don't know that the Examiner has this picture. Let's get that for him. Tell him where the Oregon Trunk is.

A. Mr. Dishman, if you have Exhibit No. 9, that map—

Exam. Dishman: Yes, I have it.

The Witness: The Oregon Trunk is the branch line. It's on this SP&S, and this is the Oregon Trunk line running down from Wishram.

Exam. Dishman: Yes; I see it right here.

The Witness: And this is this whole Willamette Valley we mentioned.

By Mr. Rockwood:

Q. Let's develop it for him, Mr. Engel, between Washington—between Portland, I should say, the main line of the SP&S to Spokane proceeds across the Willamette River to Vancouver, Washington, a few miles north—that's correct, isn't it?

A. Yes, sir.

Q. And then proceeds along the north bank of the Columbia River, almost all the distance within sight of the river, to Wishram, Oregon—

A. Wishram, Washington.

Q. Wishram, Washington.

A. That's right.

Q. And at Wishram, Washington, which is on the north bank of the Columbia River, the line known as the Oregon Trunk proceeds across the Columbia River into Oregon, and [fol. 724] thence south to Bend. That's correct, isn't it?

A. Yes, sir.

Exam. Dishman: About what distance is this Bend branch?

By Mr. Rockwood:

Q. How far is Bend from Wishram? Do you recall?

A. I think I have it in one of these exhibits. Just a minute. Wishram to Bend is 151.5.

Q. So that the geographical situation will be clear, between Portland and a point in Oregon on the south bank of the Columbia River, opposite Wishram, is the line of the Union Pacific from Portland for a movement east, the main line of the Union Pacific?

A. Yes, the Union Pacific runs on the south bank.

Q. And at this point, just across the river from Wishram, the Union Pacific has a connection with the same track as that operated over by the Oregon Trunk and the line of the railroad used by the Oregon Trunk becomes the Bend branch of the Union Pacific?

A. That's my understanding.

Q. And they operate on the same rails the whole distance?

A. Yes.

Q. And serve all the same points?

A. Well, there was some unification not too long ago. I don't remember the date, but they are the same.

Q. Well, coming back to this sentence I've read: "I should [fol. 725] also like to point out in this connection that with the exception of the Bend, Ore. branch line and Portland, Ore. and Vancouver, Wash., there are actually only a few points common to both the S. P. & S. and Union Pacific."

You have rates joint with the Union Pacific from points on the Southern Pacific in the Willamette Valley?

A. Surely.

Q. And to the extent that there are joint rates over that route via Marengo, those points on the Southern Pacific for practical purposes are the same as points on the Union Pacific itself?

A. Yes, sir.

Q. So that, so considered, there are many stations other than those on the Trunk—Oregon Trunk and Portland, and Vancouver, which are so reached by the Union Pacific?

A. Yes. I was talking about the Union Pacific versus SP&S here.

Mr. Maguire: Your question, Mr. Rockwood, is addressed to the Union Pacific and its connections, the Southern Pacific?

Mr. Rockwood: That's correct. I said for practical purposes the Union Pacific can reach those points on the Southern Pacific in the Willamette Valley.

By Mr. Rockwood:

Q. Now, you say: "Those lines . . ." referring to the SP&S and Union Pacific "... are on opposite banks of the Snake and Columbia Rivers for a distance of about 250 miles, and as a practical matter, much of the territory reached by the S. P. & S. is served by it exclusively, and [fol. 726] establishment of rates with the Milwaukee will not be a duplication of rates already available to the Milwaukee."

How many sawmills are there on the SP&S in that 250 mile stretch?

A. I couldn't tell you exactly, sir.

Q. Are there many?

A. I think there are probably a dozen.

Q. Where does the 250 mile stretch start? At Portland?

A. Well, down here just—yes, Vancouver.

Q. The 250 miles defines the territory extending 250 miles east of Portland or Vancouver?

A. Yes, sir.

Q. That would take you a little east of Pasco?

A. Yes, sir.

Q. Pasco is some 200 miles from Portland?

A. Yes, sir.

Q. On the SP&S?

A. Yes, sir.

Q. That's approximate?

A. Yes, sir.

Q. Have you—you say there may be a dozen sawmills in that area. Do you know how many sawmills there are along the Union Pacific on the south bank of the Columbia River west of The Dalles, Oregon?

A. No, I don't.

[fol. 727] Q. There are several there, aren't there?

A. I believe so.

Q. And can those mills be reached by your Union Pacific, Marengo route?

A. Yes, sir.

Q. And they cannot be reached by the SP&S because they're local to the Union Pacific?

A. When you're talking about "can it be reached", whether they have the joint rates or not—

Q. No joint rates via the Union Pacific from those mills on the south bank between The Dalles and Portland?

A. I don't know for sure. I doubt it though.

Q. You doubt it?

A. Yes.

Mr. Maguire: Well, wait a minute now. Do you know, or don't you know, Mr. Engel?

The Witness: I would want to look at the tariff to be sure.

By Mr. Rockwood:

Q. Well, if your doubts are supported by your examination of the tariff, it's pretty much a stand-off, isn't it? The mills on the north bank are balanced by the mills on the south bank?

Mr. Maguire: That's objected to as argumentative here. Counsel can testify on that in his brief.

Mr. Rockwood: That's not argument. I'm asking about the number.

[fol. 728] Exam. Dishman: Do you know anything about the numbers of the mills?

The Witness: No, I don't.

By Mr. Rockwood:

Q. But to the extent that there are mills on the south bank which are local to the Union Pacific and which, if your doubts are justified, cannot be reached by the SP&S, to that extent there is traffic available to you which is not available to the SP&S, balancing to a degree, depending upon numbers, the numbers on the north bank served by the SP&S which you cannot now reach?

Mr. Maguire: I object to that portion of the question commencing with the word "balancing" for the reasons stated before.

Exam. Dishman: I'll sustain that objection.

Mr. Rockwood: On the ground it's argumentative?

Mr. Maguire: Yes.

Exam. Dishman: Yes.

By Mr. Rockwood:

Q. Do the lumber rates from Southern Pacific points via Portland, Union Pacific, Marengo, Milwaukee, apply from Southern Pacific points as far south as the California border?

A. Yes, sir.

Q. How many mills are there located on the Southern Pacific, served by the Southern Pacific, between Portland and the California border?

A. I don't know.

[fol. 729] Q. As a matter of fact, did you ever inquire of the Southern Pacific for a publication showing the number of mills?

A. No, sir.

Q. You know from your general knowledge of this territory that, in addition to the mills along the Southern Pacific at Eugene and north thereof, there is a vast timber producing territory served by the Southern Pacific south of Eugene, lumber producing facilities served by the Southern Pacific south of Eugene? That's correct, isn't it?

A. It certainly is.

Q. And you have access to that territory south of Eugene via the Union Pacific and the Marengo route?

A. To a limited destination territory.

Q. Well, as the lumber rates off the Union Pacific have been described, but you have them anyway?

A. We have rates to our territory.

Q. And you can reach all points north of the Ohio and Potomac Rivers via across lake routes?

A. Roughly, that is correct.

Q. Does the SP&S have any opportunity to handle on joint through rates any of that lumber produced south of Eugene? Do you know?

A. I don't know for sure. I thought they did.

Q. The SP&S south of Eugene?

Mr. Maguire: Pardon me. Was the last question and answer, or answer, rather—was that, "I think they do", [fol. 730] or words to that effect?

Exam. Dishman: Yes.

By Mr. Rockwood:

Q. Turn to your Exhibit map, which is Exhibit 9, will you, please? You indicate you have—

A. This one here?

Q. The map, yes, Exhibit 9. You indicate by your designation of Vernonia in green that from Vernonia and only from Vernonia do rates apply to the Milwaukee territory designated in green west of Mobridge on this map, is that correct?

A. Yes, sir.

Mr. Maguire: Wait a minute now. Let's get that—the exhibit says "from which rates are named". Do you mean named or applied?

Mr. Rockwood: Wait a minute.

Mr. Maguire: Your legend says, "Indicates Oregon station Vernonia from which such rates are named." You asked the question "apply". Now, which did you mean? Let's get this straight.

Mr. Rockwood: If you think it's important to the rates, does the tariff name rates other than from Vernonia?

The Witness: Not to this Montana territory.

By Mr. Rockwood:

Q. Well, do the rates apply from any station other than Vernonia?

A. Well, to the extent that they would hold as a maximum.

Q. Yes, and by the intermediate application, they would likewise apply from stations on the SP&S as far east as [fol. 731] Skamania, which lies east of Portland, is that correct?

A. Well, they would apply from origin points en route, from intermediate points en route to Spokane, but such maximum rates would be higher than the general prevailing rates from this intermediate territory to the destinations.

Q. Well, would the rates named from Vernonia to the territory you have designated in green apply likewise by intermediate application from Vancouver, Washington?

A. Yes, sir.

Q. And Camas, Washington?

A. Yes, sir.

Q. And points along the main line as far east as Skamania?

A. I don't know just where Skamania is, but, if it's on the main line, it would. They would hold as a maximum.

Q. It's in very fine print here, but Skamania is—Camas, Washougal, Cape Horn, and Skamania are the four stations on the SP&S east of Vancouver?

A. Yes, they'd apply from Skamania.

Q. And that's about the limit of the SP&S points from which the rates will apply via—by virtue of the intermediate application of the Vernonia rates?

A. Well, they encounter a generally lower basis from points east of—

Q. East of Skamania?

A. East of Skamania, yes.

[fol. 732] Mr. Maguire: Mr. Examiner, I wonder for—I don't like to break in on Counsel's train of thought, but I have one question which I think would clarify the situation on those Vernonia rates and which would be at a convenient point in the record for ready reference. Could I ask one question?

Exam. Dishman: All right.

Mr. Maguire: Do those by any intermediate application rule, do those rates from Vernonia apply from any point on the Oregon Electric south of the junction of the Oregon Electric with the Keasey branch of the SP&S, that is, the Willamette Valley branch?

The Witness: No, they would not.

Mr. Maguire: That's all I had.

Mr. Rockwood: I trust you will please bear with me, Mr. Examiner.

Mr. Maguire: Mr. Examiner, could I ask another clarifying question along the same line?

Exam. Dishman: All right.

Mr. Maguire: No, I have no question to ask.

By Mr. Rockwood:

Q. On Page 18 of your prepared statement, you say:

"The territory reached via Spokane, Wash. is therefore relatively small in comparison with the remainder of the United States east and south thereof which is not reached at single-factor joint through rates via Spokane, Wash." The following sentence, "This situation largely nullifies the [fol. 733] the practicality of such rates as the Milwaukee does have via Spokane, for the reason that a lumber shipper must look to the eventuality of diversion at competitive rates to points beyond the original billed destination which is denied him in the case of routing from S. P. & S. shipping points . . ."

Shouldn't there be interpolated, "via SP&S to Spokane"?

A. Oh, yes, I meant that to be understood.

Q. That's right, Spokane and the Milwaukee, but all this territory you're talking about, of course, the shipper of lumber has available to him the joint through rates with the SP&S with the Great Northern and Northern Pacific to either Laurel and thence Burlington, or to Minnesota Transfer and thence some connecting line beyond into the consuming territory?

A. No, sir, that isn't true. There is much of this territory here south and—

Q. I'm talking about the consuming territory to the east of Minnesota Transfer. I should have limited it.

Mr. Maguire: Should I ask that the witness have the question read to him?

Exam. Dishman: All right.

(Question read.)

By Mr. Rockwood:

Q. That was limited, Mr. Engel. I didn't mean to talk about points local on the Milwaukee in South Dakota. I was referring to the territory in the east and southeast which you have indicated can't be reached via the Union [fol. 734] Pacific, Marengo route; to that territory in the east and southeast, they have everything—they have a complete line of joint through rates over the northern lines through the Laurel gateway and the Twin Cities, have they not?

Mr. Maguire: Now, just a moment. I think, Mr. Rockwood, that you perhaps misspoke yourself because this portion of the testimony deals with rates via the SP&S. Did you mean to say Union Pacific and Marengo?

Mr. Rockwood: Via the Marengo route.

Mr. Maguire: Yes.

Mr. Rockwood: Union Pacific, Milwaukee, Marengo.

By Mr. Rockwood:

Q. As I understand it, if there's any confusion, you are pointing to the fact that the Union Pacific, Milwaukee route via Marengo is limited by this across lake restriction to final destinations north of the Ohio and Potomac? You have so indicated?

Exam. Dishman: What is your understanding of it?

Mr. Maguire: Mr. Examiner, I wonder if I could be heard just a moment here. I think the Counsel is cross examining the witness on language used on Page 18 of this statement, and that language, if you consider the context, definitely refers to the limitation or the restriction of territory reached via the existing lumber rates via SP&S to Spokane and thence Milwaukee.

He is not talking at this juncture in regard to the Union Pacific.

[fol. 735] Mr. Rockwood: Let me read your sentence again. I thought there was some connotation in there that the Union Pacific—I'll read it over again.

By Mr. Rockwood:

Q. Let's get at it this way: The SP&S, Milwaukee rates via Spokane do not apply to Chicago—east of Chicago?

A. That's correct.

Q. And they apply only to the yellow territory on your map?

A. Yes, sir.

Q. The Union Pacific, Milwaukee rates via Marengo apply to all Milwaukee destinations shown in yellow on the map—shown in the area colored yellow on the map, do they not?

A. Yes, sir.

Q. With the privilege of diverting in transit for movement over the across lake routes into the area north of the Ohio River and the Potomac River?

A. Yes, sir, there are rates across lake.

Q. Yes, but you can't, via the Union Pacific, Marengo route, get into the southeast on through rates?

A. That's right.

Q. But into the southeast, the producer of lumber on the SP&S can reach that territory via the northern lines to either Laurel, thence the Burlington, or the Transfer and thence connections beyond?

A. This particular paragraph that you refer to deals [fol. 736] with the practicality of the rates.

Q. Well, wait a minute, Mr. Engel; just a minute. Whatever your paragraph deals with is beside the point. I'm asking you on the rate structure as to what the producer of lumber on the SP&S has available to him.

A. He has joint rates on direct shipments to that territory via the routes you mentioned.

Q. Yes, and the fact is that the Milwaukee feels that the people that live along its line don't have enough routes to take care of them?

Mr. Maguire: Now, just a minute. I think that question, Mr. Examiner, is one which deals with the arguments that may be made by Counsel on both sides in this case, and, of course, this witness is a witness on the rate situation, and to go after him on the question of the motives of the Milwaukee or kindred subjects, I believe is outside the scope of his testimony.

Exam. Dishman: What do you say to that, Mr. Rockwood?

Mr. Rockwood: I think it's perfectly clear. On the other hand, this witness' statement is argumentative when he talks about nullifying the practicality of such rates. He can tell whether or not they apply, and the statement is argumentative. My question was probably argumentative.

Mr. Maguire: Go ahead and argue with him.

Exam. Dishman: No; let's don't get any argument on the record. There will be briefs for that.

[fol. 737] Mr. Rockwood: If the Examiner please, referring to Exhibit 10, there is a great deal of material in that exhibit relating to destinations which are not reached by either the Milwaukee or the defendant lines, such as St. Louis, Detroit, Pittsburgh, New York, Boston, Oklahoma City, Fort Worth, Texas, New Orleans, Atlanta, and Jacksonville.

I move that all the data in this exhibit relating to points not served by either the Milwaukee or the SP&S be stricken on the ground that the proper parties are not before the Commission upon which the Commission could make an order establishing joint through rates.

Mr. Maguire: Is this based upon the same considerations, Mr. Rockwood, as your motion to strike portions of Mr. Nickels' Exhibit 1?

Mr. Rockwood: I've forgotten what I said then, but there are no—

Mr. Maguire: That was in regard—if I may refresh your recollection, you asked that portions of Mr. Nickels' exhibit —I think that motion got a little bit involved there, it dealt with shipments destined to points on what Mr. Nickels referred to as foreign lines or connections of the Milwaukee.

Mr. Rockwood: That's the same point I make here.

Exam. Dishman: What do you say to that, Mr. Maguire?

Mr. Maguire: I think the same reply is applicable in this case as it was in my reply to Mr. Rockwood's motion to [fol. 738] strike a portion of Mr. Nickels' statement, that this is a proceeding to secure primarily an order requiring the SP&S to desist from violations of Section 3, Paragraph 4, of the Act.

So far as the question of misjoinder or lack of joinder of proper parties, I believe that the same considerations exist on our side with respect to this motion as existed with respect to the former motion which was denied with respect to Mr. Nickels' exhibit.

Exam. Dishman: Anything more, Mr. Rockwood?

Mr. Rockwood: Oh, I don't think so. Let me take one little look. The motion is on the same ground as before on my former motion.

Exam. Dishman: Well, the same ruling. The motion will be denied.

Off the record.

(Discussion off the record.)

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, please.

By Mr. Rockwood:

Q. Turn, will you, please, to your E. ibit No. 10, Page 1? What is the city of the largest population in the State of Montana?

A. Billings, I believe.

Q. Isn't Great Falls larger?

Mr. Lutterman: I think there's a controversy between [fol. 739] Great Falls, Billings, and Butte.

The Witness: There may be some—

By Mr. Rockwood:

Q. Will you accept my figures from the census on those three towns?

A. Surely. I'm not too sure.

Q. 1950 census figures—we have the census here which can be verified—Great Falls 39,214, Butte 33,251, and—well, Billings isn't on this, but, whether Billings is larger than Great Falls, the fact is that Great Falls is one of the two or three largest cities in the State?

A. Yes.

Q. What is the Great Northern mileage from Spokane to Great Falls? Do you know?

A. No. I would say around 500 miles.

Q. What is the Milwaukee mileage from Spokane to Great Falls?

A. About 700.

Q. If you're correct—

A. Beg your pardon?

Q. On the basis of that then, there's a 200 mile difference in the Milwaukee route? It would be 40 per cent circuitous over the Great Northern route to Great Falls?

A. Our route is circuitous as compared with the Great Northern between Spokane and Great Falls.

Q. But you do not include Great Falls, which is one of the principal cities in Montana, in your circuity statement here?

[fol. 740] A. I simply took what I thought were representative points along the line there.

Q. Well, isn't Great Falls a representative point?

A. Well, there are probably others besides Great Falls.

Q. Let me ask you this: You have compared in this exhibit the relative circuity via the northern lines to Minnesota Transfer and the Milwaukee route in each case, have you not?

A. No, sir, not in all cases.

Q. What interior junctions have you used for the Great Northern and Northern Pacific other than Minnesota Transfer?

A. I've used such interior junctions as Aberdeen, South Dakota, and Oaks, North Dakota, in getting into that territory and south into Texas. I could cite several of them, but what I did in this exhibit was simply to compare or as nearly as possible to compare the mileages over the Milwaukee with those over the GN and NP via routes crossing the Montana-Dakota State line.

In other words, I felt that was a fair and a lifelike comparison. Now, if there were routes that were normal tariff routes via the Great Northern across there and then Aberdeen and the Northwestern down into Texas points, like Fort Worth, for example, I used that, and then I used our own line down to Council Bluffs or Omaha, into Kansas City, and then on, so that they were comparable as nearly as I could—you know, without going into too much detail.

Q. Well, of course, Laurel is an important junction on [fol. 741] traffic handled by the northern lines, is it not?

A. Oh, certainly.

Q. And that being west of the Montana-Dakota line, you did not give any data relating to mileages via the Laurel route?

A. No. There was a pretty good reason for me not doing that, at least I felt it was a good reason. The Laurel route is not open on lumber, for example, to Chicago and on east and north of the Ohio and Potomac Rivers, and what I tried to do was to get a common basis or method of working these rates or distances, so that they could be followed throughout. I didn't want—there are other routes shorter even than the Laurel route, I believe, between some of these points, but I tried to make a comparison, as I say, lifelike across the Montana-Dakota State line.

Q. Well, in some cases, the Laurel route via the Burlington to some of these destinations is shorter than those you

have shown via your junctions east of the Dakota-Montana line?

A. Yes, sir, there are.

Q. And if you used figures for the Laurel route in those instances compared with the routes and the distances you show via the Milwaukee, the Milwaukee circuity would be increased in some instances over those you have here?

A. In some instances, yes. It would not be too material, I don't believe.

Q. Do you know whether the Laurel route via the Burling-
[fol. 742] ton applies to Council Bluffs, Iowa?

A. I'm quite sure it does.

Q. Or Des Moines, Iowa? Do you know?

A. I'm not sure. On lumber, I'd be a little bit afraid of it.

Q. Well, you think it does apply to Council Bluffs?

A. Yes, sir.

Q. You don't have those distances via Laurel?

A. No, I don't.

Q. Will you refer to your Exhibit 11, please?

A. Yes.

Mr. Rockwood: Mr. Examiner, I wish to make the same motion to strike, which I made with respect to points on what Mr. Maguire calls foreign lines, as I made with respect to the earlier exhibit.

For instance, on Page 3 of section 1 of this exhibit, data are included relating to St. Louis, Missouri; Detroit, Michigan; Pittsburgh, Pennsylvania; on Page 4, New York, Boston, Oklahoma City, Fort Worth, Texas; and on Page 5, Atlanta, Georgia; Jacksonville, Florida; and New Orleans.

Mr. Maguire: Could I interrupt you just a moment, Mr. Rockwood?

A ruling has been made twice before on this rumor to strike, and I assume that neither Counsel nor myself will repeat any argument on any motions. Could it not be understood that the same motion applies to all rates to points upon the connections of the Milwaukee, or to points
[fol. 743] on railroads who are not named as parties to this case?

Mr. Rockwood: Well, that may help, but this is not going to take long.

Exam. Dishman: You want to bring it up in each instance?

Mr. Rockwood: I'd like the record to show it.

Mr. Maguire: May it be understood—of course, I don't like to anticipate the rulings of the Examiner, but I will not offer any argument in opposition to this motion unless the Examiner calls upon me for it.

Mr. Rockwood: I wish to make a similar motion with respect to destinations shown on Page 1 of Section 2, in several instances on Page 2 of that section, and so on through the entire section, and the same motion with respect to destinations not on the Milwaukee or the SP&S which appear on Page 1 and some of the following pages of Section 3 of this exhibit.

Exam. Dishman: The same ruling as previously made. Motion denied.

By Mr. Rockwood:

Q. Here's a small point, Mr. Engel, on Page 1 of this exhibit. You have a rate in the first block, which is Aberdeen, South Dakota. On Page 1, the first block in the second column, you show a rate from Sweet Home to Aberdeen via the Milwaukee of 98 cents.

Is it not true that there is a proportional rate of 7 cents from Sweet Home to Albany, Oregon, published in Item 860, [fol. 744] Orégon Electric 65-P, ICC F-166, which, added to the 86 cent Albany rate, would make the Sweet Home rate of 93 cents?

A. I'm not sure whether that 7 cents proportional you speak of applies on the entire description. This particular rate is made up of a combination at Albany too, using a rate from Sweet Home to Albany of 12 cents, as shown by that explanation of Circle 9 on Page 6.

I'm not sure. I'll take your word for it. If I put the wrong combination down, it should be corrected, but just reference to the tariff itself, I mean as I recall looking at the tariff, there is some proportional rate on certain classes of lumber.

Q. Turn to Page 24 of your prepared statement; under the heading, "West of Trans-Continental Territory on the

Milwaukee," the third paragraph. So that we'll be clear, what do you mean by west of trans-continental territory?

A. West of the Missouri River on our line.

Q. So, when you say in the third paragraph, "This intermediate territory . . . " you're referring to territory between Spokane and the Missouri River?

A. Yes, sir.

Q. You say in that third paragraph: "This intermediate territory served by the Milwaukee is a large consumer of lumber and other forest products from the Pacific Northwest, and more particularly in recent years, it has been looking to the Pacific Coast for manufactured goods such [fol. 745] as . . . " and these are the words I refer to particularly, " . . . Furniture, Aluminum Products, Iron and Steel Products . . . "

Where is aluminum produced on the SP&S?

A. I believe at Vancouver, Washington.

Q. And only at Vancouver on the SP&S?

A. I think that's right.

Q. And, of course, as has been said many times, Vancouver is reached also by the Union Pacific?

A. Yes, sir.

Q. Where is furniture produced on the SP&S?

A. I know that Portland and East Portland are important shipping points of furniture.

Q. You don't know of any other furniture producing points on the SP&S, do you?

A. I don't know exactly, no, sir.

Q. And, of course, Portland is reached by the Union Pacific?

A. Yes, sir.

Q. Where are iron and steel products produced on the SP&S—manufactured?

A. I believe in the Portland area.

Q. And the same answer with respect to rail service, of course, applies there?

Mr. Maguire: Is that a question or a statement? He said the Portland area. The Portland area is not all of it [fol. 746] served by the Union Pacific.

Mr. Rockwood: All right.

By Mr. Rockwood:

Q. Is there any portion of the Portland area which produces iron and steel articles which is not served by the Union Pacific?

A. I don't know for sure.

Q. Actually, with the exception of Portland and Vancouver, there is no area on the SP&S which manufactures —at which there are general manufacturers for manufactured articles?

A. Perhaps it would be very limited and specific commodities. I can think, for example, of this Fir-tex at St. Helens, Oregon.

Q. Is that classified as a manufactured article or forest product? I don't know. Do you know?

A. I believe under the tariff it falls under the term of wallboard. It may be that today they have it under the lumber description.

Q. Well, except for Fir-tex, which is manufactured at a plant in St. Helens, Oregon, on the Astoria branch, you can't think of any other manufactured products, other than those produced at Portland and Vancouver?

Mr. Maguire: In order that the witness may understand the question, has this questioning been shifted from the four items with which you opened this line of cross examination?

Mr. Rockwood: Yes, it's shifted.

[fol. 747] Mr. Maguire: It has shifted now to manufactured articles in general, is that it?

Mr. Rockwood: Which would be classified other than forest products in the Commission's commodity classification.

The Witness: I think the SP&S serves most of the manufacturing points in this area.

By Mr. Rockwood:

Q. And serves practically none outside of the Portland area, the area of Portland and Vancouver?

A. I don't know just what the Astoria line, but that is strictly local, and, of course, there are canned goods produced there. I think they're—I would hesitate to say that

the Union Pacific serves every point of manufacture that the SP&S does. I couldn't say that of my own knowledge.

Q. Well, I wouldn't be surprised if that were true, but, generally speaking, insofar as they both serve Portland and Vancouver, the Union Pacific will serve most of the points on the SP&S, Oregon Electric, and Oregon Trunk, producing manufactured articles, isn't that true?

Mr. Maguire: Might I have that question read?

(Question read.)

Mr. Maguire: Do you mean, Mr. Rockwood—the Oregon Trunk doesn't get anywhere near the Portland and Vancouver area, or are you restricting your question to the Portland-Vancouver area?

Mr. Rockwood: I was eliminating from manufactured articles those which are in the classification of forest [fol. 748] products, and I think the witness so understood me.

Mr. Maguire: All right, if the witness understood you.

Mr. Rockwood: We eliminated the forest products a moment ago, Mr. Maguire.

Mr. Maguire: And you're restricting your question to the Portland-Vancouver area, as I understand it, is that right? That's the way I understand it.

Mr. Rockwood: No, no.

Mr. Maguire: That's what the question says.

Mr. Rockwood: No, no.

By Mr. Rockwood:

Q. In view of the fact that both carriers serve Portland and Vancouver, is there any substantial production of manufactured articles at points on the SP&S which are not reached by the Union Pacific—the SP&S system lines?

A. I think the Union Pacific reaches most of them.

Q. In the next sentence, you say: "It is in turn . . . " you're talking about still this intermediate territory between the Missouri River and Spokane " . . . a large producer of wheat and other grains, Hay, Livestock, Wool and other Agricultural Products . . . "

Now, considering those agricultural products, is there any movement, any substantial movement of any of those commodities to points on the SP&S other than Portland?

A. You're speaking of these that I list, such as—

Q. Let me rephrase it. The major portion of the total [fol. 749] movement of those commodities, insofar as the SP&S is concerned, from Montana is to Portland, is it not?

A. The major movement of wheat would be to Portland and Vancouver from our line.

Q. Yes.

A. There would be other movements though to this Columbia River territory.

Q. Some, yes, but the major movement is to Portland?

A. Of wheat.

Q. Is there any hay movement westbound from Montana to points on the SP&S?

A. Right now and for the past couple years, I don't believe so. There has been in years past though. That hay is—it's a surplus production in Montana of hay in the past few years, and is continuing.

Q. And as far as livestock is concerned, insofar as shipments to points on the SP&S are concerned, the principal movement is to the market at North Portland?

A. We had a movement of horses, the so-called slaughterhouses, down to Redmond on the Oregon Trunk.

Q. And that, of course, is also served by the Union Pacific?

A. These particular cars moved via the SP&S.

Q. They moved via the SP&S, but Redmond is served by the Union Pacific?

A. Yes, sir.

[fol. 750] Q. Turn to Page 25 of your prepared statement. The paragraph begins: "Much of this area is served exclusively by the Milwaukee and has been the origin and destination of varied and substantial amounts of freight traffic moving from and to points in Oregon and Washington." I quote that simply to identify the paragraph.

Will you tell us in connection with the statements which you made in that paragraph what stations on the SP&S between Vancouver and Spokane, which are not served by carriers other than the SP&S, receives and uses Montana products?

A. You're speaking strictly of SP&S local points?

Q. No; I say—yes, that's right, exclusive SP&S local points which are not served by another carrier, other than the SP&S?

A. I haven't any exact knowledge of the movements from Montana to SP&S exclusive local points.

Q. So that you cannot name any such stations or name any Montana products that move to those stations?

A. No, sir. If we had the rates, I might have a little more information on that.

Q. Well, the rates wouldn't tell whether anything moved, would it?

A. It might enable us to have a movement. So, we would know.

Q. You'd know whether it could move, but that wouldn't tell you whether or not it does move? In other words, they might be paper rates? That's correct, is it?

[fol. 751] A. It's possible.

Q. You say, "This disadvantage . . . " in the same paragraph " . . . extends also with respect to points served by the S. P. & S., which are also reached by the Northern Pacific Ry., such as Pasco, Wash."

What industry at Pasco, Washington, or what consumers at Pasco, Washington, use any products produced in Montana?

A. Well, I have in mind that there is a movement of potatoes from Montana to the Pasco area.

Q. Do you know that there is such a movement?

A. Just from a general understanding and rate applications that there is such a movement.

Q. Just from the fact that rates are published?

Mr. Maguire: He didn't say that.

Mr. Rockwood: He said general knowledge of rate applications.

Mr. Maguire: He said from his general understanding and the rate applications.

Exam. Dishman: Well, just how did you arrive at your knowledge?

The Witness: Well, as I recall it, we passed on the question of publishing rates on potatoes from our Montana territory into eastern Washington, and I'm basing it on that.

There has been applications and rates published for that movement.

Mr. Maguire: Could I interrupt just a second? What do you mean by applications and rates published—'applica-
[fol. 752] tions, particularly?

The Witness: Well, proposals placed on the public docket for rates.

Mr. Maguire: Are those proposals for—

Mr. Rockwood: Now, wait a minute. Who is examining the witness?

Mr. Maguire: I asked to be allowed to clarify it.

Mr. Rockwood: Excuse me. I probably didn't hear.

The Witness: Beg your pardon?

Mr. Maguire: Applications by shippers or carriers, or both, or what?

The Witness: Both. As I recall this particular case, it was a matter that the carriers instituted to meet truck competition. There was some trucking from Montana to eastern Washington points.

By Mr. Rockwood:

Q. Were those seed potatoes?

A. Yes.

Q. Is that the only product that you can think of that's used in the Pasco area produced in Montana?

A. Just offhand, it is, yes.

Q. In the next paragraph, you say: "Traversing the extreme eastern part of Washington, the Panhandle of Idaho, the entire State of Montana and western sections of North and South Dakota, the Milwaukee has 1,053 miles of main-line and 876 miles of branch lines between Spokane, Wash. and Mobridge, S.D. In this area, it serves 315 local points. It is true that many stations on the Milwau-
[fol. 753] kee in Montana bear the same name as stations on the Northern Pacific Ry., but the two railroads are often separated by a river or are several land miles apart . . ." and so forth.

You have that paragraph there?

A. Yes, sir.

Q. At those points where the Milwaukee and the Northern Pacific are close together, but with no physical connection

between the two railroads, at any one such station, what industries are located at those points, other than possibly grain elevators or lumber yards?

A. That would probably sum it up pretty well.

Q. Yes. Would you be able to name the stations served by the Milwaukee in Montana, served only by the Milwaukee in Montana, with populations in excess of 1,000?

A. I haven't checked the populations. I could name the stations served only by the Milwaukee.

Q. Well, for the most part, all of those stations, served only by the Milwaukee, are little more than villages with no industries other than elevators and lumber yards, is that right?

A. I wouldn't discount the Milwaukee's territory to that extent, sir.

Q. I am saying, which are not served by another railroad?

A. That's what I'm speaking of too.

Q. But you can't tell—excuse me—if you include Harlowton, Roundup, and Baker, as towns served exclusively by [fol. 754] the Milwaukee, is there a single town or station in the State of Montana served exclusively by the Milwaukee where the population is in excess of 1,000?

A. As I say, I didn't check the populations. I couldn't answer that.

Q. But without discounting Milwaukee territory, isn't it a fact that with the exceptions that I named there are no stations in Montana served exclusively by the Milwaukee that are more than villages?

A. Villages? It doesn't register with me exactly.

Q. Well, I would be more specific if I had the figures before me. I haven't them before me, without checking the census and referring you to the census, I can't very well read them to you.

You are unable to tell us, of course, how many of these so-called stations or towns served exclusively by the Milwaukee are so small that they are not even listed in the census? You would not be able to give us any such data?

A. I am not, sir.

Q. It's true, is it not, that the larger cities and towns in Montana are served by the—that are served by the Mil-

waukee, are served by one or the other, by the Great Northern or the Northern Pacific?

A. That's correct.

Q. That includes such towns as Great Falls, Butte, Lewis-
[fol. 755] town, served by the Great Northern?

A. Yes, sir.

Q. And it includes such towns as Bozeman, Butte, Deer Lodge, Miles City, Missoula, served by the Northern Pacific?

A. That's correct.

Q. Have you made any investigation or any study of any nature whatsoever to determine what percentage of the traffic to and from the SP&S for which the Milwaukee could compete, if it won this case, consists of lumber and other forest products?

A. What percentage consists of lumber? No, sir, I haven't taken—I haven't broken it down to percentages.

Q. Well, how did you break it down?

A. All the information I have on the movement from and to the SP&S is that obtained from the record of our accounting department as to the movements via our line. Now, of course, that doesn't disclose movements via the other lines, and just what the percentage of lumber to the general traffic is of the SP&S, I wouldn't know.

Q. Are you prepared to concede, or do you know the facts as to whether or not over 50 per cent—well over 50 per cent of the total traffic originated or terminated by the SP&S, for which the Milwaukee could compete, if it won this case, consists of lumber and forest products?

Mr. Maguire: Pardon me. Mr. Examiner, the witness has already said that he did not—had made no computa-
[fol. 756] tion of the percentage.

Exam. Dishman: Would that be your answer to this question?

The Witness: Well, he brings terminated in, and I couldn't quite understand lumber terminated on the SP&S.

By Mr. Rockwood:

Q. No. I say of the traffic originated and terminated, the total traffic originated and terminated, including all

commodities for which the Milwaukee could compete, if it won this case, consists of forest products eastbound?

A. I wouldn't know for sure. I haven't any percentage figure on it.

Q. Are you prepared to state that lumber and forest products is the most important single commodity involved in this case?

A. Definitely, yes, sir.

Q. So that, if you won the case on lumber, you would feel that you had made some advance, some substantial strides?

Mr. Maguire: Just a minute. I think that is a statement, rather than a question, and it's an argumentative statement, let alone a question.

The Witness: We'd be far from satisfied—

Mr. Maguire: Just a minute, Mr. Witness.

Exam. Dishman: Let's let it go at that. We've got enough on the record regarding that.

By Mr. Rockwood:

Q. Have you made any computation or any study to determine the extent to which lumber moving on the SP&S, moving from the SP&S, could move via the competitive [fol. 757] route of the Southern Pacific and the Union Pacific? Have you made any study of the subject?

A. A study of the actual movements?

Q. Yes.

A. No, sir, nothing beyond the examination of the tariffs as to the extent of territory covered.

Q. Have you made any study to determine the extent to which lumber now—forest products now moving from points on the SP&S could, if the shippers wished, move via the Union Pacific, Marengo route, in connection with the Milwaukee?

A. I'm not quite clear on the question.

Q. Have you made any study to determine the extent to which shippers presently using the SP&S could, if they wished, use the Union Pacific, Marengo route?

A. Such of them as did route over our line, and whether they could move via the Union Pacific, no.

Q. No. The extent to which they could avail themselves of the Union Pacific, Marengo route in place of the movement over the SP&S which they actually use?

A. I couldn't—no, I made no such study.

Q. Suppose the Union Pacific, Marengo route were changed so that, on lumber moving over that route, the shipper could divert from points on the Milwaukee to all points in the east and southeast, east of the Mississippi River, and to the southwest, to the extent that he can now [fol. 758] move lumber over the northern lines and the SP&S.

Your position—your situation with lumber would be substantially cured, would it not?

Mr. Maguire: Now, just a moment. That is a question, Mr. Examiner, which should properly be addressed to Counsel in the course of argument before the Commission, and I do not believe that this witness is on the stand to state the policy of the complainant in this case, and has no authority to state what the position of the complainant would be on an entirely hypothetical state of facts.

Exam. Dishman: Is that your understanding of the matter, Mr. Engel?

Mr. Rockwood: Well, Mr. Examiner, this witness has talked about the disabilities of the Milwaukee under certain conditions. I am asking him whether those disabilities would—that he has described—I'm not asking him about policy of anybody—

Mr. Maguire: Well, you were asking, in effect, whether the complaint could be satisfied, and this witness has no authority whatever.

Mr. Rockwood: I'll just rephrase it.

By Mr. Rockwood:

Q. Would the disabilities which you described with respect to movements over the Union Pacific, Marengo route be removed if the shippers using that route had full diversion privileges to all points east of the Mississippi, and to the southwest?

[fol. 759] Mr. Maguire: Now, Mr. Examiner, I wish to object to that question. It's purely argumentative. The

question simply amounts to this: If they did not have these disabilities, would they be free of these disabilities? Now, that's all the question amounts to when it's boiled down, and it's purely argumentative, and, for that matter, a self-answering question. It's an argumentative question.

Mr. Rockwood: Your answer, you will stipulate, would be "Yes"?

Mr. Maguire: I'm not stipulating anything with you about that.

Mr. Rockwood: I think the question is perfectly proper. He described disabilities, and I'm asking him what will be necessary to remove the disabilities.

Exam. Dishman: Well, do you know what will be necessary to remove the disabilities, Mr. Engel, that you've referred to?

The Witness: Establishment of rates by the SP&S would be one way of removing them.

By Mr. Rockwood:

Q. I'm talking about the disabilities now existing via the Union Pacific, Marengo route.

A. It seems so fantastic to even think that the Union Pacific would give us those rates after all these years. It's simply a how high is up question.

Q. Doesn't it seem equally fantastic that the Great Northern, Northern Pacific and the SP&S should be compelled [fol. 760] to give you these rates after all these years?

Exam. Dishman: Well, I believe that is getting into a little argument.

Mr. Rockwood: I do too. I think the answer is ridiculous. Excuse me, I apologize for that statement.

By Mr. Rockwood:

Q. As a matter of fact, whether or not the disabilities may be removed, however fantastic you may consider it to be, Mr. Engel, that is something entirely outside the control of the SP&S, is it not? I'm speaking now of the Union Pacific, Marengo route.

A. Whether the Union Pacific joined in additional rates?

Q. Yes.

A. Whether that's outside?

Q. Yes.

A. Yes, it is.

Q. And is entirely outside the control of the Great Northern and Northern Pacific?

A. I would say so.

Q. Yes. Have you ever asked the Union Pacific to do it in recent years?

A. We had a recent adjustment on rates with the Union Pacific on lumber. I think I mentioned it, and it ran to additional origin territory on the Southern Pacific to destinations east of Lake Michigan, and they were very careful in that adjustment to not expand the present application [fol. 761] of rates from their own origins. From that, it's very clear that they—while not asked directly, the answer would be a foregone conclusion that they would not grant us any further rates.

Q. Is this a fair statement of the general traffic policy of the lines serving the Pacific northwest, including the Milkaukee: Carriers do not apply their rates via all junctions, but, on the contrary, each carrier guards its own longest possible line haul, and there are very few cases where this policy is departed from to permit transiting on another line at the same rate as via the origin carrier's long haul route.

A. I think that's a fair statement.

Q. Yes. Now, if the Commission upon the facts which will be developed later in this case finds that the Great Northern, SP&S route, and the Northern Pacific, SP&S route, are or do involve carriers under common management or control, then the granting of the relief that you seek in this case would short-haul the Great Northern and Northern Pacific and would be contrary to that which you have conceded is the general policy of rate-making in this territory?

Mr. Maguire: Mr. Examiner, Counsel is asking this witness to project or predict what the decision of the Commission would be under a state of facts which has not been proven as yet, and which is—if at all, and is very much at issue in this case, and I submit that is entirely an improper question.

Mr. Rockwood: I think that this witness, a traffic witness, [fol. 762] is competent to testify on traffic policies, and I think that in cross examination I may assume a set of facts and ask him for his opinion.

Mr. Maguire: But that, however, Mr. Examiner, is asking this witness, in effect, this: If we're able to prove a certain set of facts, and if the Commission decides one way, will that not be contrary to all of the standards of procedure out here?

Now, I think that's purely—he asks the witness to indulge, to engage in prophecy, and also he is asking the witness to prejudge or pre-criticize.

Exam. Dishman: I'll sustain the objection on the ground it is conjectural.

Mr. Rockwood: I take serious exception to that ruling, Mr. Examiner.

Exam. Dishman: All right, your exception will be noted.

Mr. Rockwood: May I remark: Here is a witness who has been free to give opinions on traffic matters. If you read through his prepared statement, there are many expressions of opinion. I think that all the opinions there are based on premises which he assumed or stated to be the fact.

Now, if the facts are different than he assumed them to be, I think I'm entitled to ask for an expression of his opinion to determine whether his opinion would be different upon a state of facts different than he used as the premise for his statement.

[fol. 763] Mr. Maguire: But that question, Mr. Examiner, was directed entirely to if the Commission did such and such a thing, would that not be contrary.

Exam. Dishman: Yes.

Mr. Rockwood: If the fact is—I'll modify the question entirely. If the fact is, rather than if the Commission determined the fact, if the fact is that there is common management or control of the SP&S in the two lines, would not this policy on this relief they seek be contrary to that which he admits to be the general policy of all lines in this territory, including the Milwaukee.

Exam. Dishman: Well, you admit that that's a point in issue in this case?

Mr. Rockwood: The fact is, yes, but I think I'm entitled to state the fact, my premise on which I asked him for his opinion.

Mr. Maguire: As to that question, Mr. Examiner, he is asking this witness to interpret the provisions of Section 15(4) of the Act and is calling for a legal conclusion on the part of the witness.

Exam. Dishman: Well, we've had enough on that. I'll stand on my ruling. Your exceptions are noted.

By Mr. Rockwood:

Q. Suppose, Mr. Engel, that the Great Northern owned the rails of the SP&S from Spokane to Portland, and thence to Eugene, Oregon, owned the rails. Then, if joint rates were made from Eugene over the Great Northern to Spo- [fol. 764] kane, and thence Milwaukee, that would short-haul the Great Northern, would it not?

Mr. Maguire: Objected to as calling for a legal conclusion on the part of the witness.

Exam. Dishman: What do you mean by owning the rails? Took over the line?

Mr. Rockwood: Yes, took over, owned the rails and operated the trains.

Mr. Maguire: That is a speculative question, and, furthermore, Mr. Examiner, it calls for a legal conclusion of the witness.

Now, the question of what is short-hauling under the provisions of the Interstate Commerce Act is a question to be determined by the Commission.

Exam. Dishman: I'll sustain the objection on the same grounds.

By Mr. Rockwood:

Q. As a matter of fact, Mr. Engel—

Mr. Rockwood: I might say Mr. Engel used the term "short-hauling" throughout his testimony. I think he knows what it means.

Mr. Maguire: Yes, I know, but your question is related to Section 15 of the Act.

Exam. Dishman: Well, it's conjectural. I think we've had enough on that topic.

By Mr. Rockwood:

Q. At the risk of offending the Examiner, I wish to ask the same question on the assumption that the Northern [fol. 765] Pacific owned the property of the SP&S between Spokane and Eugene and actually operated it with its own power and crews?

Mr. Maguire: Same objection.
Exam. Dishman: The same ruling.

By Mr. Rockwood:

Q. You have asked here, Mr. Engel, for rates on grain from Montana at points located on the Milwaukee to SP&S destinations via the route Milwaukee, Spokane, thence SP&S to destinations, have you not?

A. Yes, sir.

Q. Do you know what I mean by short-haul? Is there a term "short-haul" which has a generally accepted meaning in the traffic fraternity?

A. Yes, it has several meanings. I assume what you mean though is that one line does not get the maximum haul to a particular destination that it might get via another junction.

Q. The rates and routes, which I suggested to talk about, via Spokane and the SP&S would short-haul the Milwaukee, would it not? Isn't that a fact? The Milwaukee now has a rate on Montana grain to Portland via the Milwaukee to Chehalis, Washington, and thence Union Pacific to Portland, does it not?

A. Yes, sir.

Q. And what is the length of the haul of the Milwaukee on that route?

A. Well, it would vary depending on the origin.

Q. All right, pick an origin point. Just pick any one over [fol. 766] there, in Montana.

A. Oh, say a thousand miles.

Q. All right, a thousand miles. What is the length of the Union Pacific haul from Chehalis to Portland?

A. Around 90 miles.

Q. So that via that route, 1,090 miles, the Milwaukee gets a haul of 1,000 miles. All right, from that same origin point, what is the distance to Spokane?

A. Oh, 650, say.

Q. So that your mileage on these figures we're using is about 350 miles from Spokane to Chehalis?

A. Approximately.

Q. On the haul from that Montana origin point, Milwaukee to Spokane, thence SP&S, the Milwaukee would get a 650 mile haul, compared with a thousand mile haul it now gets via the Chehalis route. That's correct?

A. You're overlooking, sir, that the only junction we have with the SP&S is Spokane. So, there can't be any short-hauling as between the two lines.

Q. The fact is the Milwaukee would get a haul of 1,000 on the assumption they could move it to Chehalis, would get a haul of 650 if it moved via the SP&S?

Mr. Maguire: To Portland, you mean?

By Mr. Rockwood:

Q. To Portland. The Milwaukee is now asking that a rate be established which will short-haul the Milwaukee [fol. 767] to the extent of 350 miles, when compared with the route that it already has via Chehalis and the Union Pacific. That is a fact, is it not?

A. The fact is that we're asking for joint rates via the only junction we have with the SP&S, and that gives us the longest haul obtainable via that direct junction.

Q. Which short-hauls the Milwaukee to the extent of 350 miles compared with the existing route that it now has with the Union Pacific?

A. I feel it's incidental that we might have another rate and via another route which does not give us as long a haul, but, as far as our routes with the SP&S are concerned, they afford us our maximum haul. That is not a short-haul in the same sense or in the common accepted sense of that term. It's not short-hauling us.

Q. Did you testify with respect to wheat rates from Montana on July 23, 1951, in the Helix Milling Company

case, Docket 30535, Helix Milling Company against Great Northern Railway Company, as follows:

"Wheat, therefore, occupies a leading position in traffic originated from a revenue standpoint, and it is vital to our welfare that we obtain maximum earnings thereon, and that the same be not decimated through establishment of joint rates via short-haul junctions."

Did you so testify?

[fol. 768] A. Yes, sir.

Q. Now, in order to get into the SP&S territory, wheat alone wouldn't have been enough to justify this case in your opinion, would it?

Mr. Maguire: Well, now just a moment.

Mr. Rockwood: Just a minute.

Mr. Maguire: Have you finished your question?

Mr. Rockwood: No, I haven't.

By Mr. Rockwood:

Q. In other words, you now have on wheat from Montana to Portland substantially that which you would get if you got another route via the SP&S via Spokane?

Mr. Maguire: That's objected to as calling for a conclusion, a legal conclusion of the witness as to the weight of the petition, the weight of our case, and I don't think that that is a proper question on cross examination.

Exam. Dishman: Did you have anything to do with the setting of the policy, formulating the policy that led to the filing of the complaint?

The Witness: No, sir.

Mr. Rockwood: May I have the question answered? I am asking this witness, who is the principal witness and who has expressed opinions on traffic questions, whether or not he does not have a rate to Portland which gives him—the Milwaukee substantially all they would get were able to force a joint route with the SP&S at Spokane.

[fol. 769] Mr. Maguire: Well, that is an erroneous statement, Mr. Examiner, because the record shows that there is a movement of wheat to Astoria and local points on the

SP&S. He singles out one point here and says it might satisfy us as to Portland. I don't know as to that.

Now, this witness is testifying as to rates, but, as to what weight the management of the railroad will give to any particular rate information that is developed, that is entirely beyond his power.

Exam. Dishman: Well, I doubt if the witness could answer, make a complete answer to that question.

Mr. Rockwood: He can't tell whether or not the complaint would have been filed, but he can give his opinion as a rate man as to the relative value to the railroad, of—

Mr. Maguire: As to how good a complaint it would have been?

Mr. Rockwood: —of alternate routes.

Exam. Dishman: I don't think we can expect this witness to testify as to what would satisfy the complaint. That is beyond his duties with the complainant. Isn't that right?

The Witness: Yes, sir.

Mr. Rockwood: All right.

By Mr. Rockwood:

Q. Mr. Engel, in the statement that I read to you from the Helix case, you were expressing a statement of the policy of the Milwaukee Road with respect to joining or refusing to join in joint through rates, were you not?

[fol. 770] A. I was expressing the position of our company with respect to additional routing to permit of transit at a point on still a third line, which additional routing was very peculiar circumstances as compared with the general movement of grain from Montana to the coast, and I might also mention in that connection that we already have joint rates from Montana via Marengo, Washington, and Spokane, Washington, as well as the Chehalis route.

Q. Your answer then is that you were in that answer expressing the policy—your understanding of the policy of the Milwaukee Road with respect to joining or declining to join in joint through rates?

A. Yes, sir. We were averse to additional routing in that issue.

Q. So, you know, do you not, what the policy of the Milwaukee is in determining whether or not to join or decline to join in joint through rates?

Mr. Maguire: Now, Mr. Examiner, I think that is an unfair question because the witness testified that he knew what the policy of the railroad was with respect to that particular case, and then Counsel blows that answer up here clear out of proportion.

Exam. Dishman: Well, the witness may answer if he knows what the policy is.

The Witness: Our policy is as stated in our introduction of this subject, and I believe you read it, and I agreed that [fol. 771] it's the general practice to not be short-hauled as between all our lines in this territory, and this routing via Spokane, the only junction with the SP&S, is not in my opinion short-hauling as such.

By Mr. Rockwood:

Q. You feel competent to express that opinion?

A. Yes, sir.

Q. All right, I want some other opinions from you. You now are competent to define what is or is not short-hauling. I would like to have your opinion—

Mr. Rockwood: The situation is a little different now than it was, Mr. Examiner.

Mr. Maguire: No, it isn't, but I'll state it at the right time.

By Mr. Rockwood:

Q. I would like to have your opinion on this question: Suppose the Great Northern owned and operated the SP&S between Portland and Spokane. If it were required to join with the Milwaukee on joint through rates on grain from Montana via Spokane, thence via the Great Northern to Portland, in your opinion would that constitute short-hauling?

Mr. Maguire: Now, just a moment. I think that the Examiner in ruling upon the previous objection to that ques-

tion made the further comment, which I think was a very just comment, that that question is assuming a non-existent and entirely hypothetical state of facts and is argumentative.

Exam. Dishman: And conjectural.

[fol. 772] Mr. Maguire: And conjectural.

Exam. Dishman: I'll sustain the objection.

Mr. Rockwood: I have no further questions.

Exam. Dishman: Any more cross examination?

Mr. Torinus: I have no questions.

Mr. Maguire: I have just one or two, I think.

Redirect examination.

By Mr. Maguire:

Q. With regard to the recent questioning on grain rates into Portland—I'm talking about Portland—via the Union Pacific, is the route Milwaukee, Chehalis, Union Pacific, or other connecting lines, the only route west of Spokane?

A. Yes, when you take into account Marengo is west, but it's the only one west of Marengo.

Q. Yes. Well, I'm getting at Marengo.

A. I see.

Q. And are there rates with the Union Pacific, not only through Chehalis, but also on the route through Marengo at the present time?

A. Yes, sir.

Q. And about how far east of Centralia is Marengo?

A. Oh, about 350 miles.

Q. About the same distance as Spokane?

A. It's a little shorter.

Q. A little shorter than Spokane, and, if rates were established, joint through rates were established with the [fol. 773] SP&S through Spokane, would there be any substantially shorter haul via the Milwaukee than there now is via the existing gateway at Marengo?

A. No, sir. It would be substantially the same.

Q. Now, with regard to the local points on the Milwaukee in Montana, from your knowledge of the pattern of traffic, both eastbound and westbound out of Montana, does the size of the community necessarily have any relationship

whatever to the volume of traffic shipped from that particular station?

A. Far from it. The smaller communities have very heavy tonnage, as a rule, of commodities produced in their immediate vicinity.

Mr. Maguire: That's all I have.

Recross examination.

By Mr. Rockwood:

Q. Such as wheat?

A. And coal.

Q. Is there any one of these small towns over there that is moving coal into Oregon?

A. Not that I know of.

Exam. Dishman: What's that?

The Witness: Not that I know of. There is production, but they haven't been able to market here on account of the rates.

By Mr. Rockwood:

Q. Do they market in Seattle?

A. Some.

Q. Do they market in Portland? Some?

A. I thought you were talking about Portland when you asked me the question.

[fol. 774] Q. I was, and then I asked you about Seattle. How much coal from Montana moved into Seattle?

A. I don't know exactly.

Q. Do you know whether the rate situation keeps them out of the market in competition with the Utah coal? Do you know anything about that?

A. No. There's a very fine measure of mine price, plus freight rates, that does control the movement of coal.

Q. Where from?

A. From Montana and Utah, Wyoming, all those interior points. The two must be added up and weighed against the BTUs, which does control the movement.

Q. With the result that Utah coal gets in here to some extent, and Montana doesn't?

A. Under the present rate structure.

Q. You don't know anything about the specifications of buyers in the Portland area on coal, do you?

A. No, sir.

Q. You don't know whether Montana coal has sufficient BTUs to meet specifications of buyers in this area, do you?

A. No, sir.

Mr. Rockwood: That's all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Engel, one thing: From what size communities or stations in Montana are livestock shipments usually [fol. 775] made? From large cities, or from small communities?

A. Generally small communities.

Q. Country stations, in other words?

A. Yes.

Mr. Maguire: That's all.

Exam. Dishman: Anything more of this witness?

(No response.)

Exam. Dishman: Witness excused.

(Witness excused.)

OFFER IN EVIDENCE

Exam. Dishman: You offered those exhibits, Mr. Maguire, from 3 to 15, inclusive, and the ruling was deferred until after the cross examination. I assume you renew that offer?

Mr. Maguire: Yes, I renew the offer.

Exam. Dishman: Any objections?

Mr. Rockwood: No objections except as I have moved against certain portions of them, which has already been discussed.

Exam. Dishman: All right, with the objections which have been made, and subject to the objections which have been made, the exhibits are received in evidence.

(Complainant's Exhibits Nos. 3 to 15, inclusive, Witness Engel, were received in evidence.)

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Exam. Dishman: Is there anything further that you have to offer at this time, Mr. Maguire?

Mr. Maguire: I have nothing further to offer at this time, Mr. Examiner, and I wonder whether now we should [fol. 776] discuss the date of the further hearing in Chicago.

Exam. Dishman: Yes, the Commission expects me to set the date as of July 29 at the U. S. Customs House on South Canal Street in Chicago.

Off the record a minute.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Maguire: At the Chicago hearing, we will complete the remainder of our presentation of this case, and I am not able to say at the present time the precise nature of the testimony that will be offered in addition to the public witnesses, whose testimony is of the same general type as has been offered at this hearing.

Exam. Dishman: You will have some public witnesses?

Mr. Maguire: Oh, yes. The further hearing was primarily for the convenience of any public witnesses living in that part of the country, but, as to the precise nature of other testimony, I regret to say that I am unable to give you an exact outline.

We are working on certain matters at the present time, and I have not personally been engaged in that activity. So, I can't inform Counsel at this time.

Mr. Torinus: Can you give us the general nature of the testimony, Mr. Maguire?

Mr. Maguire: I've given you what will happen at the Chicago hearing. It will be the completion of our testimony [fol. 777] upon which we will rely in this case. I know that

you want to know about specific things, but I cannot tell you at this time.

Mr. Torinus: I don't want to know about anything specific, but I would like to know the general nature of the carrier testimony which you may introduce in addition to the carrier witness who will lay the foundation for Mr. Kiley's testimony.

Can you give us in general terms the nature of that testimony, or can you tell us whether there will be such testimony?

Mr. Maguire: You mean the testimony of the witnesses laying the foundation for Mr. Kiley's testimony, those figures?

Mr. Torinus: No. I say I would like to know if you can tell us the general nature of the carrier testimony, if any, in addition to the testimony of that witness.

Mr. Maguire: I think the pattern of testimony in cases of this kind is pretty well established, and I think I will just content myself by saying at the present time that what we offer there will be in accordance—at least, not in addition to the general pattern.

Now, I don't think that Counsel can consistently ask me at this time for a preview of our testimony in the case.

Exam. Dishman: Yes.

Mr. Maguire: Because they will have ample time in which to prepare their case after they hear it, after they hear our testimony.

Mr. Rockwood: The point becomes material, however, in [fol. 778] this connection: We had out here in Portland many representatives from the Operating and Traffic Departments of the northern lines, as well as representatives of those departments from the SP&S. We would not like to have to take people all the way across the country from Portland particularly, or bring them down from St. Paul, to sit around the hearing room if there is going to be nothing in which their departments are interested or implicated.

We brought them out here with the understanding that the major part of the complainant's case, particularly on operating and traffic subjects, would be covered at this hearing, and that the Chicago hearing would be confined

almost entirely to the completion of their shipper testimony, calling people east of the Missouri River.

Much to our surprise, they put in, except for Mr. Engel's study, practically none of the testimony which we anticipated, and we don't want to have that process repeated at Chicago if we can help it.

Now, that's our interest in finding out what we may expect to hear at Chicago.

Mr. Maguire: In commenting upon Mr. Rockwood's statement, I do not wish to have any false impression attached to his words there was an understanding. Whatever understanding there was was entirely unilateral.

Mr. Rockwood: It was my understanding.

Mr. Maguire: There was no understanding whatever be- [fol. 779] tween Mr. Rockwood and myself, or anyone representing the complainant, as to what type of testimony would be offered anywhere, none whatever, and, so far as—now, if he speculated upon our putting in certain types of testimony and brought people out here for the purpose of listening to it, I do not think that any criticism should attach to us, because his speculation proved baseless, and I do not wish to mislead him as to the type of testimony to be offered in Chicago on our part.

I think it's possible, though I do not wish to be bound by this, I think it's possible that there will be some operating testimony offered at the Chicago hearing, but, whether under the issues as defined in this case we want to make what Counsel might like to have us put in, some sort of a full-fledged operating picture, I am unable to state at this time whether we will or will not do that, but I think that, if he wants to be prepared on operating testimony, he probably had better bring his experts down from St. Paul, the same as he brought them out here.

Mr. Rockwood: And Portland.

Mr. Maguire: And you had some from Portland too. Well, I would leave that entirely up to him. It is possible that there will be operating testimony, but I do not wish to be bound by any understanding that there positively will be.

Exam. Dishman: Well, I think we have enough on the record regarding that.

[fol. 821]

Transcript of Proceedings of November 9, 1954

Mr. Maguire: I will call Mr. March.

A. H. March was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Your name is A. H. March?
A. Yes, sir.
Q. And where do you live, Mr. March?
A. I live at Oshkosh, Wisconsin.
Q. And, what is your business?
A. I am vice-president of the Fuller-Goodman Company.

Mr. Rockwood: Of what company?
The Witness: The Fuller-Goodman Company.

By Mr. Maguire:

Q. What is the business of the Fuller-Goodman Company?
A. Fuller-Goodman Company is a line lumber yard operator; also engaged in the wholesale and retail of building materials.
Q. And can you tell us the retail— First, the retail lumber yards operated by your concern, and give us the location of each of them? How many do you have?
A. We have eighteen retail branches located in Eastern Wisconsin, and beginning at the south end we have Pewaukee, Sussex, Richfield—

Mr. Torinus: Will you give us the railroad location of each?
Mr. Maguire: Yes, that is a good idea.
The Witness: Pewaukee is on the Milwaukee Road; Sussex is on the Soo Line and the North Western; Richfield, [fol. 822] the Milwaukee; Slinger, the Milwaukee; Fall River, the Milwaukee; Markesan, the Milwaukee.
Q. Will you spell the last one?
A. M-a-r-k-e-s-a-n.

Q. All right.

A. Waupun, Milwaukee; Berlin, Milwaukee; Oshkosh, Milwaukee, Soo Line, North Western; Winneconne, Milwaukee; Center Valley, Soo Line; Waupaca, Soo Line.

Q. You had better spell that one, too?

A. W-a-u-p-a-c-a. Marion, North Western; Wrightstown, North Western; Greenleaf, Milwaukee; DePere, Milwaukee and North Western; Marinette, North Western and Milwaukee; Menominie, Michigan, North Western and Milwaukee.

I think that covers all of them.

Q. And where is your—I believe you mentioned the Oshkosh retail yard?

A. Our headquarters are in Oshkosh.

Q. And you have a retail yard there?

A. We have a retail yard there, and a wholesale yard at Oshkosh.

Q. Do you have any other wholesale yards besides the one at Oshkosh?

A. We don't have any other wholesale yards.

Q. I see. And would you mind stating the volume of the wholesale business which you conduct at Oshkosh?

A. In the last three years the sales would average be- [fol. 823] tween nine hundred thousand dollars and a million dollars per year.

Q. Now, have you made an investigation and do you know whether or not shipments of lumber routed from the S. P. and S. system via Milwaukee, interchanged at Spokane, will move to all of these yards which you have mentioned at the same rate as is available to you via the Great Northern and Northern Pacific from Spokane to Minnesota Transfer and then Milwaukee, or other Western Trunk Line carriers to destination?

A. I don't think that it would move at the same rate to all of our branches.

Q. What type of lumber do you principally deal in at your yards?

A. Largely western fir, western hemlock, Idaho pine and Ponderosa pine from the West Coast; some cedar siding and some cedar shingles.

Q. And, so far as fir and pine are concerned, do you have any distribution in quantity as between green lumber and dried lumber?

A. I would say that our distribution would be about fifty per cent dry lumber and fifty per cent green lumber, in so far as Douglas fir is concerned and larch. The other lumbers are largely dry lumbers that are shipped.

Q. And have you considered, or are you generally familiar with the proposal made by the complainant in this case, the Milwaukee Road, with respect to the establishment of through rates and whatever through routes may be necessary via Spokane on lumber from S. P. and S. points to Spokane and thence Milwaukee or its connections, to [fol. 824] final destination? Are you generally familiar with the proposal?

A. Yes, I am.

Q. And, will you state what, if any effect, benefit or otherwise, the granting of such proposal would have upon the conduct of your business?

A. Our present needs call largely for the shipment of lumber in mixed cars, which means that we have various species of lumber in the same car? At the present time we are receiving kiln-dried lumber from points west of Spokane. We have stopped those cars for the loading of spruce lumber at Libby, Montana, and Troy, Montana, but we also require considerable Idaho white pine which, from our suppliers, past suppliers, has been in declining quantities. We are finding it very necessary to seek new sources of supply and have had to go west due to that several times in the past few years.

Q. Could I interrupt you just a moment, Mr. March?

A. Yes, sir.

Q. You say that your principal source of supply of your fir is west of Spokane?

A. Yes, sir.

Q. Of your kiln-dried fir, I believe you said?

A. Yes, sir.

Q. Now, would you pinpoint that a little bit more as to what railroad or railroads you get it from?

[fol. 825] A. At the present time, it is coming largely

S. P. and S. and its lines designed as an Oregon line of some kind. I am not familiar with the full names, and then they are turned over to the Northern Pacific and the Great Northern at Spokane and come east over those lines. Now, that lumber has originated at Klickitat, Washington, Linton, Oregon, Waterloo, Oregon and White Salmon, which I think is in Washington.

Q. Are those all of your sources of kiln-dried fir?

A. We also get some kiln-dried fir from warehouse corporations which is shipped to various points.

Q. Well, I mean from these points that you have named.

A. These are all kiln-dried sources.

Q. They are?

A. That is right.

Q. Now, then, are you personally familiar, and have you been for some years past, with possible sources of supply of pine in the Pacific Northwest?

A. Yes. We have had a very good source at Orofino, Idaho, which has been eliminated because they don't have enough of the lumber kiln-dried to supply us and the other customers, and we being the last on the list have fallen by the wayside, so that source is gone. There is some available to us in Spokane, and I am also aiming to secure a quantity of Idaho white pine from the St. Maries Lumber Company at St. Maries, Idaho.

Q. Now, then, as to these shipments to these yards which [fol. 826] are located either on other railroads than the Milwaukee or at common points between the Milwaukee and other railroads, what is the rate situation on cars which are loaded, say, at Klickitat, Washington,—which I think it will be stipulated is a local point on the S. P. and S. Railway—

A. That is right.

Q. (Continuing) —and stopped to complete loading with Idaho pine at St. Maries, Idaho, and then forwarded to your common point lumber yards, or what we will call your foreign line lumber yards that you have located on other than the Milwaukee; what would be the rate situation on them?

A. Well, it is my understanding that if we load a car partly with dry fir and then move that car on to St. Maries for completing the load with pine, when that lumber is

shipped to certain of our yards, there probably would be no increase in the rate at, I think, about ten of your yards.

On the other hand, there are three who are on the Milwaukee and the North Western where the rate would be increased to us, and then there are five others, not on the Milwaukee Road, where we understand that the rate would be higher, particularly if we wanted to stop a car at some point for partial unloading and then moving it on farther for unloading the remainder of the lumber.

Q. In your shipments, do you make use of the stop for partial unloading privilege on lumber and, if so, at what [fol. 827] points, or at what class of points? What I am trying to get at is whether it is at your own yards or at the customers you might have and then the rest to go to your yards?

A. To answer that question, I have got to say that we haven't done any of it because we have tried several times and it happened at points where the rate would have been increased to us. However, since we have increased the size of our wholesale yard, it has gotten to a point where we, in selling carloads of lumber, can sell only a portion of a car to one customer and a portion to another. Suppose we wanted to take a part of the lumber into one of our own branch yards, and send the rest to either the wholesale yard in Oshkosh or to some other customer serviced by our wholesale yard, and that being the case, it is very important to us to have a through rate without any added expense over and above what would normally apply to a full carload delivery in one place.

Q. As I understand it, your testimony in that respect then applies to these cars which you would stop at St. Maries for completion of loading?

A. Yes, sir.

Q. And, are you personally familiar, and were you personally familiar before this case, before you became aware of this case, with the St. Maries Lumber Company as a source of supply, Mr. March?

A. Yes, I have been familiar with that point for five or [fol. 828] six years. I have been there myself and I have a son who is a forester, and who works for the St. Joseph

National Forest, who first acquainted me with that source of supply, and there are other places also at Orofino, Spokane, and Eugene. I am quite familiar with sources of supply out there.

Q. And, do you have through rates on lumber from points on the Spokane, Portland and Seattle to Oshkosh where one of your retail yards and your wholesale yard is located?

A. I do not know just what you mean by that.

Q. What I mean is this: Could you get as cheap, as far as transportation cost is concerned, through Spokane-Milwaukee to Oshkosh as you could through Minnesota Transfer thence Milwaukee or other Western Trunk Line carriers into Oshkosh?

A. I don't think we could into Oshkosh.

Q. And, is your wholesale yard in Oshkosh utilized frequently for disposing of the balance of these part carloads that are sold?

A. Yes, sir.

Q. Now, I wonder if you could give me a rough estimate as to the number of cars per year which you ship into your eighteen retail and one wholesale yard from the Pacific Northwest?

A. Oh, it is well in excess of one hundred and fifty cars; two hundred cars; somewhere in there.

Q. And, could you give us any rough estimate as to the number of such cars that originate at points on the Spokane, Portland and Seattle system, that is the Spokane, [fol. 829] Portland and Seattle Railway Company, Oregon Electric Railway Company, and the Oregon Trunk Railway?

A. Well, I haven't made a complete check on that, but I think there was somewhere around between forty-five or fifty carloads.

Q. Do you know whether you can ship from points on the Spokane, Portland and Seattle Railway Company through Spokane, or to Spokane, thence Milwaukee to Marinette and Menominee, Marinette, Wisconsin, and Menominee, Michigan yards as cheaply as you can route them through Spokane and thence via Great Northern or North-

ern Pacific to Minnesota Transfer and from there on via midwest carriers?

A. I don't believe we can.

Mr. Maguire: You may cross-examine.

Exam. Dishman: Do you have any questions, Mr. Quasey?

Mr. Quasey: No.

Exam. Dishman: Cross-examine.

Mr. Maguire: Before the cross-examination starts—Pardon me.

Exam. Dishman: Go ahead.

By Mr. Maguire:

Q. I am going to ask about the St. Maries Lumber Company. If these rates, through rates were available to all of your yards, is that a potential source of supply or one that you would actively cultivate?

A. It is a potential source. We have had some other people make inquiries for us, and they told us there was a good possibility of getting some lumber there, but we have [fol. 830] not contacted them directly.

Q. Is it one you would hold in reserve or go out actively and make inquiries?

A. I intend to go out there in January and try to make a connection.

Q. Now, then, so far as the location and tracing of cars is concerned, cars in transit, if the Milwaukee were to handle these cars, all of these cars from Spokane through to your destinations, what are your feelings about the advantage or disadvantage, as the case might be, of tracing and locating cars under those circumstances?

A. I would say that based upon actual experience over a period of years that we get very good service from the Milwaukee Road through our local agent in Oshkosh.

Q. Now, when you have a car coming in which leaves Spokane on the Great Northern or Northern Pacific, with whom do you get in touch to trace that car?

A. I can't answer the question because that is handled by our wholesale manager, and I do not know just exactly how he traces that, but I am assuming that—

Mr. Rockwood: Just a minute. I don't want your assumption. You have already stated that you do not know.

The Witness: All right.

Mr. Maguire: All right.

By Mr. Maguire:

Q. But would you be satisfied, based upon past experi- [fol. 831] ence with the Milwaukee service in tracing cars all the way through from Spokane to destination?

A. Yes.

Mr. Maguire: You may cross-examine.

Cross examination.

By Mr. Rockwood:

Q. What is the name of the company from which you purchase at Klickitat, Washington?

A. J. Neals Lumber Company.

Q. What products does J. Neals Lumber Company manufacture at Klickitat?

A. We buy kiln-dried fir lumber there only.

Q. The J. Neals Lumber Company also cuts pine, does it not?

A. Ponderosa pine, I am told.

Q. Ponderosa pine?

A. Yes, sir.

Q. I see. You have not bought any Ponderosa pine from the J. Neals Lumber Company?

A. In very limited quantities, yes, sir.

Q. What lumber company is located at Linton, Oregon, from which you purchase?

A. I think the name is the Wood Products Company.

Q. Is the Wood Products Company a manufacturer?

A. At least they are the people we bought lumber from.

Q. The Wood Products Company is a wholesaler, is it not?

A. I assume that they are wholesalers located in Portland.

Q. You do not know the name of the mill.

[fol. 832] A. No, I do not.

Q. By the way, where is Linton?

A. I don't know. It is on the Spokane, Portland and Seattle, I think.

Q. How far is it from Portland, do you know?

A. No.

Q. As a matter of fact, it is a part of the City of Portland, is it not?

A. I understand it is close by, but I do not know just how far it is from Portland.

Q. The Linton district is within the city limits of Portland, is it not?

A. I am not familiar with that.

Q. For mills in Oregon, the Union Pacific would serve and absorb the switching charge, would it not, it being within the switching limits of Portland?

A, I wouldn't know that. I have never specifically—I have never specified the routing on them.

Q. So that if that were true, would rates be available via the Union Pacific, Marengo and the Milwaukee to Oshkosh?

A. I believe they would.

Q. So, for Linton you are not limited to service by the Spokane, Portland and Seattle, are you?

A. I wouldn't say that we are.

Q. All right. Who do you purchase from at Waterloo, Oregon?

[fol. 833] A. The Alexander Lumber Company.

Q. Does it have a dry kiln?

A. We have had some kiln-dried fir from them. I do not know whether they have a dry kiln or not.

Q. Isn't the Alexander Lumber Company also in the wholesale lumber business?

A. Yes.

Q. Can you say positively that the kiln-dried fir you got through the Alexander Lumber Company came from Waterloo, Oregon?

A. I think so because the bill of lading carried the name "Waterloo" in that case.

Q. Where is Waterloo, Oregon, located?

A. That is fairly close to Portland, also.

Q. Is it on the Spokane, Portland and Seattle, or the Oregon Electric or the Oregon Trunk?

A. It is on the Oregon O. W., whatever that is.

Q. There is no such railroad any more.

A. That is what the bill of lading read.

Q. The O. W. is the Union Pacific Line, isn't it?

A. I don't know.

Mr. Maguire: We all know that Waterloo isn't on the Union Pacific.

Mr. Rockwood: Except the witness.

The Witness: I took that off the bill of lading.

By Mr. Rockwood:

Q. You just found the O. W. on the bill of lading?

[fol. 834] A. Yes, sir.

Q. You do not know what that O. W. stands for?

A. The bill of lading said the O. W., Spokane, Great Northern, Milwaukee.

Q. But you do not know what railroad the O. W. is?

A. No, I do not.

Q. What?

A. No, I do not.

Q. But Waterloo, Oregon, is close, you believe, to Portland, Oregon?

A. I think it is.

Q. From what mill do you purchase at White Salmon?

A. The Bingen Lumber Company.

Q. Does it have a dry kiln?

A. We receive kiln-dried fir lumber from them, yes.

Q. Is the Bingen Lumber Company the consignor?

A. Yes.

Q. It is?

A. Yes.

Q. How big a mill have they got? What is the capacity of the mill; do you have any notion?

A. I do not have any notion as to their capacity; but we get quite a number of cars from them.

Q. How many carloads did you get in the year 1953

[fol. 835] from the Bingen Lumber Company?

A. Probably ten or twelve cars.

Q. By the way, how many did you get from the J. Neals Lumber Company in 1953?

A. I think about forty-five cars; forty-five or forty cars.

Q. Forty or forty-five cars from the J. Neals Lumber Company, alone?

A. I think so.

Q. At Klickitat?

A. I think so.

Q. I recall your testimony that you got forty-five to fifty cars from all Spokane, Portland and Seattle points?

A. Well, forty to forty-five cars. There are a few of these that came from other suppliers I mentioned, but the bulk came from Klickitat.

Q. J. Neals is the principal source?

A. That is right.

Q. What is the difference in— By the way, you talked about purchases from Libby, Montana.

A. Yes, sir.

Q. What company operates at Libby, Montana?

A. The J. Neals Lumber Company.

Q. What is their principal operation,—pine, fir, larch or what?

A. We get spruce principally, but we also get some fir and larch from there.

[fol. 836] Q. What road are they located on?

A. I think they are on the Northern Pacific.

Q. You are quite sure of that?

A. It is one of the two,—the Great Northern or the Northern Pacific. They have two places, Troy and Libby —and I am a little bit confused as between the two.

Q. One is on one railroad, and the other is on the other railroad; is that right?

A. I think so.

Q. Isn't it a fact that both Troy and Libby are on the Great Northern?

A. I don't know.

Q. You are not very familiar with the location of these plants in this western territory, are you?

A. I have never been in Libby or Troy. I didn't say that I was familiar with them.

Q. No. And you have never been to Waterloo, Oregon?

A. No.

Q. Have you ever been at Linton?

A. No.

Q. At the mills there at Linton?

A. No.

Q. Is the Bingen Lumber Company a wholesaler or a manufacturer?

A. A wholesaler.

Q. What is the name of the manufacturer of lumber at [fol. 837] Bingen from which you purchase?

A. Well, we always call it the Bingen-White Salmon Lumber Company.

Q. Is there any company by that name with a plant at Bingen?

A. I don't think so.

Q. Can you tell us the name of the company you purchase from?

A. The Bingen Lumber Company.

Q. I mean the name of the plant at Bingen?

A. No, sir.

Q. You can't tell us whether the plant has a dry kiln or not?

A. I have not been in those places. I have been only in Spokane, Portland and Eugene, Oregon.

Q. That is about the extent of your knowledge of the western territory?

A. Yes, sir.

Q. What companies other than the St. Maries Lumber Company manufacture Idaho white pine of similar grade to that manufactured by St. Maries, all the way through Idaho?

A. Well, I am only familiar with the larch and white pine company at Orofino.

Q. There are a great many more, aren't there?

A. Oh, yes.

Q. Am I exaggerating if I would hazard a guess that there may be one hundred manufacturers which make a product similar to that of the St. Maries Lumber Company?

A. I don't think you would be, no.

[fol. 838] Q. They are on the Northern Pacific, Great Northern, Milwaukee and Union Pacific?

A. Yes, sir.

Q. On all of those railroads?

A. Yes, sir.

Q. And, if they are on the Union Pacific, could you stop in transit to complete loading?

A. Yes.

Q. If they are on the Milwaukee, you say th you can't stop in transit if it comes off the Spokane, Portland and Seattle, to complete loading?

A. I understand that we can't.

Q. You are not positive about that?

Mr. Maguire: Just a minute. Just to be fair to the witness here now. I think the question asked was as to these common points, and as to these points he mentioned. He did not testify that he could not stop to partially unload at about eleven of his plants or yards. Let us be fair now.

Mr. Rockwood: I certainly intend to be fair with the witness.

The Witness: At ten of our yards.

By Mr. Rockwood:

Q. Are there any of the yards of your company at which you can not receive lumber from Spokane, Portland and Seattle origin points where you wish to stop to complete loading at St. Maries, Idaho?

A. Yes, at Oshkosh, Marinette, Wisconsin, Menominee, [fol. 839] Michigan, and the five yards that are on other lines, that would be.

Q. All right. Now, tell us whether or not for those yards that you have just referred to, you could stop to complete loading at others of these hundreds—at the hundred mills that I talked about located on other lines, could you complete loading of cars moving from Spokane, Portland and Seattle points at these other hundred mills?

A. Probably at some of them. I wouldn't say one hundred.

Q. So when it comes down to white pine, you are complaining that you can not complete loading at St. Maries

despite the fact that you can complete loading at many, many other mills other than at St. Maries?

A. I am interested particularly in this loading of dry lumber at Klickitat, completing the loading of cars at that particular point. That is the principal source of supply.

Q. Yes, at Klickitat.

A. That is right.

Q. Are there other points in Idaho at which you can complete loading of cars originating at Klickitat, and still move to these points that you just enumerated?

A. Well, I suppose if they moved via Union Pacific or Southern Pacific, I think they could, but I don't think they could by Great Northern or Northern Pacific.

Q. Are there white pine mills on the Great Northern and Northern Pacific?

[fol. 840] A. I would assume that there are.

Q. But you say in moving out of Klickitat, you would be unable to complete loading of material moving from Klickitat at Great Northern or Northern Pacific points in Idaho?

A. I don't want to convey the impression that we are entirely unable to, but we would like to move from—move lumber from Klickitat to St. Maries if we are able to make that connection, because it is a good connection.

Q. All of the lumber which you purchase from the J. Neals Lumber Company is purchased firm, ordered direct from the mill and loaded according to what you order, is it not?

A. Yes, sir.

Q. J. Neals Lumber Company does not engage in the so-called roller car business, does it?

A. We have never bought any roller car lumber from them. We have never had any opportunity to do so, so I do not know.

Q. Do you buy roller cars?

A. Occasionally.

Q. How many roller cars have you bought out of this one hundred and fifty to two hundred cars per year; of that number, how many are roller cars?

A. For our retail business, I don't think we have bought any roller cars. Our wholesale yard has sold some, and I am not familiar with how many.

Exam. Dishman: In order that the record may be clear, [fol. 841] will you explain what you mean by roller cars?

The Witness: A roller-car is the same as a transit car which is loaded and started out by the supplier with lumber in it, and we try to sell it while en route.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. In the year 1953, how many roller cars did you buy?

A. I can't answer the question. I would have to guess at it, because it is a very limited amount. Our cars are largely loaded to specification, and on that account would have to be loaded firm; mixed cars.

Q. Is there any yard owned and operated by your company, including your wholesale yard at Oshkosh, to which you would get lower freight rates than are now available, if the Milwaukee should get these rates via Spokane joint with the S. P. & S.?

A. I don't think there is for an entire shipment directly from loading point to final destination.

Q. And, except for this one point, St. Maries, where you hope to do some business, are there any points where you have, in the past, completed loading, where you would get cheaper rates, where you would have had cheaper rates had the Milwaukee had joint through rates with the S. P. and S.?

A. Yes, I think there were some, but a very limited amount.

Q. Can you tell us what they were? You think there were some?

A. Yes.

[fol. 842] Q. Are you positive there are some?

A. I am not prepared to say. I haven't the record with me, and I couldn't say offhand.

Q. You can't tell us whether or not there were any?

A. I know there were some, but I can't tell you how many, or where they were.

Q. If you get a car which moves from S. P. and S. origin points, such as Klickitat, Washington, to Spokane; thence Great Northern or Northern Pacific to the Twin Cities; thence Milwaukee to Oshkosh, can you partially unload at Oshkosh, and move on to your other yards located on the Milwaukee?

A. If it comes in on the Milwaukee Road, that is the dead end, and that is where it stops.

Q. Even though it moves Milwaukee only from Minnesota Transfer to Oshkosh?

A. Yes, sir.

Q. It is your understanding that it can not be diverted or stopped for partial unloading at Milwaukee points, and moved to another Milwaukee point in Wisconsin?

A. Well, I think that can be done at ten of our yards, but not at the ~~other~~ eight.

Q. All right. At those other eight, that is, the ones located—well, those are located on the North Western for the most part, are they not?

A. Three, I think, are on the North Western and two on [fol. 843] the Soo Line.

Q. What railroads serve Oshkosh?

A. The Soo Line, North Western and the Milwaukee.

Q. All right. Now, if you bill a car from an S. P. S. point to Spokane; thence Great Northern or Northern Pacific to the Twin Cities; thence North Western to Oshkosh—?

A. Yes.

Q. (Continuing) —you can partially unload at Oshkosh, and then move to other North Western points, can you not?

A. Yes, sir.

Q. And also, via the Soo Line, where you route it beyond Minnesota Transfer, you can unload partially at Oshkosh, and move on beyond Milwaukee and North Western points, by selecting your line, can you not?

A. I would think so.

Q. Now, the Soo Line doesn't serve Oshkosh, does it?

A. Yes.

Q. The Soo Line serves Oshkosh?

A. Yes.

Q. All right. Then by moving S. P. and S. to Spokane; thence Great Northern or Northern Pacific to the Twin Cities, and Soo Line to Oshkosh, you can partially unload that Soo Line car and move to other Soo Line destinations, can you not?

A. We could move to one other, once the car gets to Oshkosh, yes, sir.

[fol. 844] Q. What other point is that?

A. Sussex.

Q. Sussex is served also by the North Western, is it not?

A. Yes, sir.

Q. You can reach that either way?

A. That is right.

Q. Via the Soo Line also?

A. Yes, sir.

Q. Is the Soo Line the sole line of railroad serving Center Valley?

A. The Green Bay and Western goes through Waupaca, but I understand the Soo Line now owns it, so I don't understand that, but it is largely Soo Line.

Q. Where is Center Valley?

A. Center Valley is nine miles northwest of Appleton, near Black Creek.

Q. You have lost me already.

A. It is nine miles northwest of Appleton.

Q. Yes, I know generally where it is. Where is Waupaca?

A. Waupaca is forty miles north and west of Oshkosh; forty to fifty miles.

Q. How big is Waupaca? Or, first, how big is Center Valley?

A. Just a wide spot in the road.

Q. Is that one of your major retail yards?

A. No.

[fol. 845] Q. How big a town is Waupaca? That is a larger town, is it not?

A. Yes. It is a county seat; probably ten thousand people.

Q. Is that one of your principal yards?

A. It is one of our good yards.

Q. You can move it by through rates to Waupaca from S. P. and S. points via Spokane?

A. Yes, sir.

Q. Thence Great Northern or Northern Pacific to the Twin Cities, and thence Soo Line, can you not?

A. Yes, sir.

Q. And do you know whether if the Milwaukee were successful in this case and got their rates through that you would be able to move to Oshkosh and divert then from Oshkosh on that Milwaukee car to the Soo Line destinations of Center Valley and Waupaca? Do you know?

A. No. I would assume that we could.

Q. But you do not know whether you could or not?

A. No, I don't.

Q. You don't know whether you would get any advantage so far as Center Valley and Waupaca are concerned in having the rates applicable via the Milwaukee from Spokane to Oshkosh?

A. No. I am considering the matter only to come in on the Milwaukee main line through Fall River and Pewaukee, and unloaded partially down there, and moving up to any of these other yards on a dead end basis on the Milwaukee Railroad. That is all I had in mind there.

[fol. 846] Q. Can't you do that now if the car moves beyond Minnesota Transfer via the Milwaukee?

A. Yes, but if we partially unload there or want to divert the car, we have an added charge.

Q. The Milwaukee would make the diversion there? A diversion charge?

A. I assume that they would to eight of our points, but not to ten of our points.

Q. Do you know whether it would?

A. Yes.

Q. They do make a diversion charge?

A. Yes.

Q. So the Milwaukee charges a little bit more, if you divert?

A. That is right. Certainly there is a diversion charge, as well as—

Mr. Maguire: Wait a minute. Are you trying to imply that the Milwaukee has a higher diversion charge than the other railroads in this country?

Mr. Rockwood: I am not implying anything.

Mr. Maguire: By your tone of voice you are suggesting that, and trying to deceive the witness, and I object to it.

The Witness: There would be a diversion charge as well as a stop in transit charge if you stopped to partially unload.

By Mr. Rockwood:

Q. That would apply even though the Milwaukee got what it is now asking for, joint through rates from Spokane?

[fol. 847] A. I don't think it would apply.

Q. You think they would then have no diversion charge?

A. They would have the same diversion charge to all of our points in that case.

Q. But there would be a diversion charge?

A. Yes, I think so.

Q. Would it be any different from what the present diversion charge is?

A. No, not from what I am told.

Exam. Dishman: Does the witness know?

The Witness: I say, not from what I am told; the information that I have.

Mr. Rockwood: That is all I have.

Mr. Torinus: I have some questions, Mr. Examiner.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Mr. March, of those one hundred and fifty cars that were purchased by you in 19 3, you said forty-five of them originated on the S. P. and S. system points.

A. Yes, sir.

Q. On what lines did the other 105 cars originate?

A. Well, I would say they were largely Union Pacific and Southern Pacific.

Q. Any Great Northern and Northern Pacific or Milwaukee?

A. Well, yes, there were some on the Great Northern out of Troy and Libby.

[fol. 848] Q. Great Northern, Union Pacific and Southern Pacific; that is all?

A. That is all I am prepared to answer today, yes, sir, without looking at the records.

Q. None originated on the Milwaukee or the Northern Pacific?

A. Well, I am still confused as to whether Troy and Libby are on the Great Northern. There were some that originated at those two points, whatever railroad they are on.

Q. Those two points are on the Great Northern.

A. On the Great Northern?

Q. Yes.

A. All right.

Q. Now, where did those cars—at what points did those cars originate that you purchased that moved originally via the Southern Pacific or the Union Pacific?

A. Well, some of them at Longview, Washington; some of them at Westfir, Oregon.

Q. Do you know how many of those 105 cars were Southern Pacific and how many were Union Pacific originations?

A. No, I do not know that.

Q. Do you know that you could have stopped every one of those cars to complete loading at St. Maries, Idaho, at the through rate to any of your yards in Wisconsin?

A. No, I didn't know that.

Q. You didn't know that?

[fol. 849] A. No, sir.

Q. How many of those cars did you stop at St. Maries, Idaho, to complete loading?

A. I just said before we didn't stop there at St. Maries. We are anticipating that as a new source of supply.

Q. Oh, I see. Then, as I understand it, last year you shipped upwards of one hundred cars from Union Pacific or Southern Pacific points which you could have stopped to complete loading at St. Maries, but you did not do so; is that right?

A. From what you say, I would say that is right.

Q. Now, in addition, on any cars originating at S. P. and S. points, which terminated at any of your retail yards served only by the Milwaukee in Wisconsin, you could have stopped to complete loading at St. Maries, Idaho; do you know that?

A. No, I did not know that.

Q. How many of these forty-five cars that you shipped out of S. P. and S. points in 1953, terminated at these local Milwaukee yards in Wisconsin?

A. Well, most of them terminated at Milwaukee destinations. From the bills of lading that I looked over, most of them were to Milwaukee destinations.

Q. How many of them terminated at Milwaukee destinations which are not reached by any other railroad?

A. Most of them.

Q. Most of them did?

[fol. 850] A. Yes, sir.

Q. Do you know that most of your cars could have been stopped to complete loading at St. Maries, Idaho?

A. No, I do not know that.

Q. What does that "most" consist of? I take it that it consists of over half of those forty-five cars?

A. Yes.

Mr. Maguire: Just a moment. Mr. Torinus is going on blandly as though the witness has answered yes to the preceding question, and then he said, "No, I didn't say that." He said most of those cars, and then he goes on.

Mr. Torinus: If I misunderstood the witness, I am sorry. I thought his answers to the two or three preceding questions led up to the succeeding questions that I have asked.

By Mr. Torinus:

Q. How many of those forty-five cars that originated on the S. P. and S. terminated at retail yards of yours in Wisconsin which are served only by the Milwaukee Railroad, do you know?

A. I say most of them. I mean the majority of them; possibly two-thirds.

Q. The majority of them did so terminate?

A. Yes, sir.

Q. Two-thirds of forty-five is thirty.

A. About thirty.

Q. So, you have had last year, out of one hundred and [fol. 851] fifty cars, roughly one hundred and thirty of them that could have been stopped to complete loading at St. Maries, Idaho, under the present rate adjustment; isn't that right?

A. If what you say is correct, I would say yes.

Q. How many of those cars in 1953 did you stop to partly unload at various destinations in Wisconsin?

A. We didn't stop any of them.

Q. You didn't stop any of them?

A. No, sir.

Mr. Torinus: I have no further questions.

Mr. Golden: I have a few questions.

By Mr. Golden:

Q. Mr. March, if you had known that you could have stopped these some one hundred and thirty cars that you had last year at St. Maries, would you be here today?

A. I don't know. I am anticipating that as a source of supply as stated before, and I intend to go there in January. I will know more about it after that time than I do today. I do know that it is a very large source of supply, and they have what we want from what information we have.

Q. Speaking of sources of supply, have you made any investigation to determine what sources of supply there might be in Western Montana and Idaho on the Great Northern and Northern Pacific?

A. I intend to do that in January.

Q. You have not done so yet?

A. No, I have visited only suppliers in the past with [fol. 852] whom we did business, and I haven't spent a great deal of time in the actual mills.

Q. Was your participation in this proceeding solicited by the Milwaukee?

A. I wouldn't say definitely solicitation. We talked about this based on the business we will do. They didn't actually ask me to testify, but in the discussion we had, I felt that

maybe some good would be served if I tried to get some thought from them.

Q. Was it a thought that had not occurred to you before?

A. It was a new thought.

Q. It was a new thought?

A. Yes, sir.

Mr. Golden: That is all.

Mr. James: Mr. Examiner, I have no questions, but I would like to invite the Examiner's attention to the fact that during the cross-examination by Mr. Rockwood of this witness, Mr. Maguire interrupted because of the tone of voice in which the questions were phrased. That is another distinction between reading the record and hearing the witness testify.

Mr. Maguire: I suppose that observation will be noted on the record.

Mr. Steadry: I have a few questions.

By Mr. Steadry:

Q. Do you control the routing of these shipments to your branches in Wisconsin?

A. We have made no election to do that, no. Occasionally [fol. 853] we have asked to do so.

Q. Well, if the complainant in this case were successful in what it has asked for, would you, in any manner, change the routing of the cars to your various branches in Wisconsin, east of the Minnesota gateway?

A. I have been thinking only of this one source of supply at Klickitat, where we want to load partially with kiln-dried lumber and finish loading with pine, and if we were to go to St. Maries or some other source of supply for that, but beyond that I would say no.

Q. My question was limited to east of the Minnesota gateway. Would you change that in any degree whatsoever?

A. No, I don't think we would. You mean east of Minnesota Transfer?

Q. Yes.

A. I don't think we would, no.

Mr. Torinus: Change from the Milwaukee west of Minnesota Transfer?

The Witness: No, east of there.

Mr. Torinus: What was the change?

The Witness: I wouldn't make any change.

By Mr. Steadry:

Q. You would leave it on the Milwaukee if it came into Minnesota Transfer by the Milwaukee; is that it?

A. No.

Mr. Maguire: That isn't the question.

[fol. 854] Mr. Steadry: That is what I am asking. Well, I will ask a new question to clarify the matter.

Mr. Maguire: To clarify it?

Exam. Dishman: Well, do you want it read?

Mr. Steadry: I will ask it again.

Exam. Dishman: All right. Maybe that will be better.

By Mr. Steadry:

Q. Well, if a car has gone to one of these Wisconsin yards over the Chicago and North Western System Lines east of Minnesota Transfer in the past, and if, as a result of this proceeding, the complainant got the relief it is requesting, and you thereafter choose to route the car west of Minnesota Transfer over the Milwaukee Railroad, would you continue to use the Chicago and North Western Railway east of the Minnesota Transfer on any such shipment?

A. Where it went to a North Western point, I don't think I would change it; North Western direct.

Q. Where it went over the North Western Line to any common point, would you change it?

A. Well, that depends entirely on what kind of service we will get. I might in some cases.

Q. Would it be a very substantial change?

A. To one of our larger yards I, in fact, did make a change.

Q. What yard was that?

A. Marinette.

Q. Marinette?

A. Yes, I did make a change this last year.

[fol. 855] Q. From what to what?

A. From the North Western to the Milwaukee.

Q. At Marinette this last year?

A. Yes.

Q. Well, in that situation, if it is already changed, you would not change it as a result of this case?

A. No, I wouldn't. It is just a matter of local service.

Mr. Steadry: That is all.

Exam. Dishman: Does that conclude the cross-examination?

(No response.)

Exam. Dishman: Mr. Maguire.

Redirect examination.

By Mr. Maguire:

Q. Mr. March, what difference, if any, is there between Ponderosa pine and Idaho white pine? Are the two interchangeable or are they different species and of different qualities?

A. To some extent, they are interchangeable. However, we do have considerable use for Idaho white pine, and we buy more Idaho white pine than we do Ponderosa pine.

Q. But there is enough of a difference so that customers, including yourselves, have a preference as between one or the other; is that right?

A. Yes, sir.

Q. Now, then, Mr. Golden asked you some questions, and also some of the other gentlemen at the other table were [fol. 856] questioning you about these one hundred and thirty cars—103 cars, I guess it was at one time; anyway the difference between forty-five and one hundred and fifty which moved in from other points in the Pacific Northwest, and the question was asked you if you had known you could complete loading at St. Maries on some of these shipments from the Willamette Valley, Eugene, and originating on the Southern Pacific down there, whether you would have either stopped to unload, or whether you would be here.

Now, then, I want to ask you, other than those forty to forty-five cars, you would buy at Klickitat, that I understand is kiln-dried fir you buy at Klickitat?

A. Yes, sir.

Q. And these other one hundred cars you bought in the Willamette Valley, for example, at Southern Pacific points; thence Union Pacific, was that kiln-dried fir in all cases?

A. It was largely green fir.

Q. What is that?

A. It was largely green fir.

Q. When you complete loading with this white pine, is that white pine green lumber or is it dried, kiln-dried lumber, otherwise dried lumber?

A. It is kiln-dried lumber.

Q. From a business point of view in the lumber business, do you load green fir in with dried pine?

A. No.

[fol. 857] Q. What would be the effect if you did?

A. It would spoil the pine.

Q. And so, therefore, even though the tariff does permit you to mingle them, from a practical business point of view do you mingle green fir with dried pine?

A. We do not.

Q. You do not do that?

A. No, sir.

Q. Therefore, with regard to these 103 or 105 cars that Mr. Golden was talking about, whether you knew about the right to stop to partially load at St. Maries, would you have availed yourself with that privilege with respect to the green fir?

A. We wouldn't load any dry lumber with green fir from any points, no, sir.

Q. That is all on that. What is your understanding, Mr. March, under the Milwaukee proposal, so far as routing east of the Twin Cities is concerned, as to whether the Milwaukee proposes that it be given single line routing only or the route be left open as it is at the present time?

A. Well, I have never interfered with the routing so long as the service was all right, and we have left that up to the shipper.

Q. I see. And you would not disturb that, as I get your testimony, unless you wanted to stop and complete loading of white pine, dried white pine, at St. Maries, a local Milwaukee point, along with kiln-dried fir, and thence to [fol. 858] one of these points to which the through rate does not apply at the present time?

A. No, I don't think that we would.

Q. In other words, you haven't anything against any of the lines operating between Minnesota Transfer and your branches?

A. No. I am merely looking for service, that is all, and the lowest rate.

Mr. Maguire: That is all.

Exam. Dishman: Mr. Rockwood?

Recross examination.

By Mr. Rockwood:

Q. What is the difference—I haven't the slightest idea—What is the difference between pine produced in Western Montana and the so-called Idaho white pine?

A. I think there is very little difference in the species that is called white pine, but Ponderosa pine is a heavier, pitchier lumber.

Q. And is white pine produced in Northern and Western Montana?

A. Yes, sir.

Q. And J. Neals Lumber Company produces white pine at Libby, does it not?

A. Yes, sir.

Q. At Libby, Montana?

A. Yes, sir.

Q. And the J. Neals Lumber Company has a dry kiln at Libby, does it not?

A. Yes, sir.

[fol. 859] Q. And if you like to do business with the J. Neals Lumber Company at Klickitat, there is no reason why you couldn't do business with the J. Neals Lumber Company at Libby, is there?

A. No, sir, not a bit. The only thing is they don't have available many times what we want in pine. They have been running heavily to spruce.

Q. But they do produce pine?

A. They do.

Q. All of these one hundred mills that we have been talking about that produce pine in Idaho and Western Montana, produce generally the same grade of lumber, that is the white pine lumber and the Ponderosa pine, as the St. Maries and the Libby people do, do they not?

A. I would say, yes, but largely it is air-dried lumber and not dry-kiln lumber.

Q. Many have kilns, do they not?

A. Some do, but there is very little dry kiln lumber available to us until the end of June.

Q. But there are a good many mills in that area other than at St. Maries and Libby, are there not?

A. That is right.

Mr. Rockwood: That is all.

Mr. Torinus: I have one more question before we get to the recross.

Exam. Dishman: All right.

[fol. 860] By Mr. Torinus:

Q. This lumber that you loaded at Klickitat that went to your yards on the Milwaukee not served by any other railroad, is there any reason why you couldn't have stopped your cars, I mean from a mixing standpoint rather than a tariff standpoint, at St. Maries, Idaho?

A. I am under the impression that we can't do it unless we had a higher rate, combination rate.

Q. That certainly doesn't apply to local destinations on the Milwaukee in your territory, does it?

A. It doesn't apply to ten points, but it does apply to eight of our points.

Q. Those ten are the points to which you shipped thirty cars from S. P. and S. origins, as I understood it, in 1953?

A. That is right.

Mr. Torinus: I have no further questions.

Mr. Golden: I have a question.
Exam. Dishman: All right.

By Mr. Golden:

Q. From what company do you buy green fir at Longview?
A. We did not buy any green fir at Longview.
Q. Did you buy any green fir from Westfir, Oregon?
A. Westfir is largely hemlock, and that is always dried.
Q. What did you buy from Longview?
A. Douglas fir. That is our main individual supply, but that is green.

[fol. 861] Mr. Golden: That is all.
Exam. Dishman: Mr. Maguire?

Redirect examination.

By Mr. Maguire:

Q. Mr. March, do you know whether there are as many as one hundred mills producing white pine, or are you accepting Mr. Rockwood's figure on that?
A. I based that on what Mr. Rockwood said.

Mr. Rockwood: I haven't the slightest idea how many there are.
The Witness: I don't either.
Mr. Rockwood: But there are a lot of them.
The Witness: There are a lot of them.
Mr. Rockwood: We will agree that there are a lot of them?
The Witness: Yes, sir.
Mr. Maguire: I wanted to get the record straight on that.

By Mr. Maguire:

Q. Do you wish to be understood as testifying that there are as many as one hundred mills which Mr. Rockwood mentioned?
A. I wouldn't specify any number.

Q. But from your efforts to secure white pine in that territory, white pine of the quality and the condition you use in your business, is that in plentiful supply and easy to get wherever you go after it?

A. No, sir, it is not.

Q. Now, for example, you were talking about the J. Neals Lumber Company plant at Libby, Montana, and [fol. 862] you stated to Mr. Rockwood that their available supply of white pine to you was limited?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Do you know whether the output of the J. Neals Lumber Company is limited, or whether they can get it elsewhere?

A. The output of—

Q. That is as to white pine?

A. The output of the J. Neals Lumber Company of white pine, you see, is limited because they are working heavily in the spruce stand to get out spruce that is seriously affected by insects at the present time, and they are trying to save all of the lumber that they can, and let the white pine go for the present.

Mr. Maguire: I think that is all.

Exam. Dishman: The witness has testified that he doesn't know the meaning of the letters "O.W" on the bills of lading. Will counsel stipulate just what those letters mean.

Mr. Rockwood: I can say what I think it was. This was a shipment from Waterloo and Waterloo is a local point on the O.E., and I think—

The Witness: (Interposing) No, it was definitely "O. W." on the bill of lading, as I recall it. It might have been a typographical error.

Mr. Rockwood: Waterloo is a point on the Oregon Electric Railway.

[fol. 863] Exam. Dishman: I see.

Mr. Rockwood: I do not know of any operating railroad in the State of Oregon that has the initials "O. W." since the Oregon-Washington Railroad and Navigation Company went out of business.

Exam. Dishman: So presumably it is a typographical error.

The Witness: It must be because I took it off of the bill of lading, and O. W. was definitely on the bill of lading.

Exam. Dishman: All right. Anything further of this witness?

Mr. Maguire: That is all.

Mr. Rockwood: Nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: I am willing to concede that it was O. E., and the O. W. was a typographical error. I do not know.

Mr. Rockwood: I will say this, that it is on the Oregon Electric. It is not near Portland.

Mr. Maguire: It is not too far from Portland as the crow flies.

Mr. Rockwood: One hundred miles.

Exam. Dishman: All right. Call your next witness.

Mr. Maguire: I will call Mr. Meyer.

LLOYD MEYER was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. State your full name, please?

A. Lloyd Meyer.

[fol. 864] Q. Where do you live?

A. I live in Minneapolis, Minnesota.

Q. What is your occupation?

A. I am traffic manager of the Northwestern Lumbermens Association.

Q. Where are the offices of the Northwestern Lumbermens Association?

A. 1013 Fourth Avenue South, Minneapolis, Minnesota.

Q. And I believe you have a prepared statement, have you not, Mr. Meyer?

A. I have a prepared statement.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.
Mr. Maguire: May we proceed?
Exam. Dishman: Yes.

By Mr. Maguire:

Q. Mr. Meyer, I think I will ask you a few preliminary questions here, some of which may be covered in a slightly different form in your prepared statement.

A. All right.

Q. But you state you are traffic manager of the Northwestern Lumbermens Association?

A. Yes, sir.

Q. I beg your pardon?

A. Yes, sir.

[fol. 865] Q. Are you appearing here as a witness for that Association, as such?

A. No.

Q. Would you state what your traffic experience has been, in general?

A. Well, I have been traffic manager of the Northwestern Lumbermens Association for three years. At the same time, I am traffic manager of the Northwestern Retail Coal Dealers Association. Prior to that time, I was traffic officer for the Commodity Credit Corporation for about one year. Prior to that, I was traffic manager for the Wheeler-Barnes Company, I believe it was approximately twenty years.

Q. And in whose behalf, that is, as whose representative, and at whose request are you appearing here as a witness today?

A. I am appearing for only those members of our Association who have complained to us of the present condition as far as routing is concerned on shipments in connection with various railroads.

Q. That is, the various railroads here involved?

A. That is right.

Q. And, in view of the fact that you are not here representing your entire membership, and to clarify your status,

did you make any demand upon the Milwaukee Railroad, or request upon them before you consented to appear here?

A. I stated that I would not appear unless I was served with a subpoena.

[fol. 866] Q. And were you served with a subpoena?

A. Yes, I was.

Q. And are you appearing here today pursuant to that subpoena?

A. I am.

Q. And have you prepared a statement?

A. I have.

Q. Will you proceed to read it, please?

A. My name is Lloyd Meyer, Traffic Manager of the Northwestern Lumbermens Association with offices at 1013 Fourth Avenue South, Minneapolis, Minnesota.

The Northwestern Lumbermens Association represents approximately 2,300 retail lumber yards in Minnesota, Iowa, North and South Dakota, a few in Montana and Nebraska and ten yards in Wisconsin.

The purpose of our Association is to attempt to perform certain services as a whole which can be done more economically and perhaps to better advantage as a group than can be done individually. It is my duty as traffic manager to supervise all traffic matters for the Association.

Q. May I interrupt there just a moment, Mr. Meyer, with a question?

A. Yes, sir.

Q. Do your duties also include counseling with and advising individual members of the Association on any traffic problems which may arise in their respective businesses?

A. Yes, sir, they do.

[fol. 867] Q. All right. Will you proceed, please?

A. I speak here today not for all 2,300 retail yards but for only those who have complained to us of the present situation in connection with the routing pertaining to lumber from the Pacific Northwest. I believe fully eighty per cent of the lumber moving to our members in the specified states originates in Washington and Oregon.

The first complaint registered with us concerns the rates and routings provided in tariffs from points on the Spokane,

Portland and Seattle Railway, the Oregon Electric Railway and the Oregon Trunk Railway.

We have members not in every town but in a great percentage of the towns on the Milwaukee Railroad from Mobridge to the Montana line on the Milwaukee main line and on the branch in North Dakota from McLaughlin, South Dakota, to New England, North Dakota, and on the branch in South Dakota from Moreau Junction to Isabel and from Trail City to Faith.

There are no through rates from the stations on originating carriers mentioned in Washington and Oregon with the exception of Vernonia and a few stations east thereof to which the Vernonia rate applies by virtue of the intermediate rule to these stations on the Milwaukee Railroad previously mentioned but combination rates in excess of the prevailing joint rate basis must apply, except to Mobridge, South Dakota, and directly intermediate points on the Milwaukee's main line to which the Mobridge rate [fol. 868] applies by virtue of the intermediate rule.

It is the desire of our members along this segment of the Milwaukee that through rates and through routes be established from points on the lines of the carriers mentioned in Washington and Oregon via Spokane or other intermediate junction points to these stations. The retail lumber dealers on this section of the Milwaukee Road should be permitted to secure their lumber from any point in Washington or Oregon without undue burden in transportation charges.

Secondly, from points on the Oregon Electric, the Oregon Trunk and the Spokane, Portland and Seattle railways to points east of Mobridge on the Milwaukee Road in North and South Dakota the through rates now apply via Spokane except they do not apply to such points as Linton, Edgeley and Fargo, North Dakota.

It is the desire of these members that through rates be provided via Spokane or other intermediate junction points to these stations for the reason that many cars are stopped in transit to partially unload. As an example, we have a member at Linton, North Dakota who also has a yard at Mobridge, South Dakota. At the present time he is unable to route a car over the Milwaukee Road, stop to partially unload at Mobridge and to complete unloading at Linton.

This same situation exists at La Crosse, Wisconsin. Our member at that point has yards, among other points, at LaCrosse, Wisconsin, and Montevideo, Minnesota. He cannot at the present time stop a car to partially unload at [fol. 869] Montevideo and proceed to LaCrosse as final destination. The same holds true with our members who wish to partially unload at their yards on the branch of the Milwaukee between Des Moines, Iowa, and Charter Oak, Iowa, with Des Moines as final destination.

It is the desire of these members that routing be provided via Spokane or other intermediate junction points to make it possible for them to enjoy this stop-over privilege.

There are no joint through rates from points located on the Oregon Electric Railway Santiam Branch east of Albany which extends to Dollar and Foster, including Waterloo, via the Milwaukee Railroad except to Mobridge, South Dakota. Recently one of our members received a car of lumber consigned to Wheaton, Minnesota which is on the branch of the Milwaukee Road from Ortonville, Minnesota, to Fargo, North Dakota, and was compelled to pay seven cents per hundred more on a combination rate than the through rate that would normally apply.

This situation will be further aggravated when Transcontinental Freight Bureau Tariff 18-p is brought up to date by including Ex parte 162, 166 and 169, as this tariff will carry maximum increases, as will also Great Northern Tariff 10-E. It is our desire that this situation be corrected and through rates and routes be established from points on the Oregon Electric, Santiam Branch.

It is customary practice, depending on the market, for lumber mills and wholesalers on the West Coast to ship cars [fol. 870] eastbound which are unsold. They are commonly referred to as "transit cars", and while they are in transit the shipper can give their sales representatives at eastern distribution points information as to grades, sizes and species, and so forth, and attempt to sell the car while it is in transit. This practice has been in use many years by the lumber industry.

The opportunity to buy cars of this type, which many times are sold at reduced prices, is very much to the benefit not only of wholesalers, but also to retail yards. However,

retail yards on the Milwaukee in South Dakota and Western Minnesota have little, if any, chance of buying transit cars which originate on the Spokane, Portland and Seattle System. The reason for this is that the West Coast shippers bill these cars over routes and under rates which will insure the widest possible area for sale of the shipments. They must have available the large markets east of the Mississippi River crossings such as Chicago and points beyond.

The South Dakota and western Minnesota retail yards which are located on the Milwaukee cannot, without rate penalty, buy transit cars which move via routes restricted to Minnesota Transfer gateway. They are, therefore, confined to West Coast transit cars which the Milwaukee carries via Spokane. Since there are no competitive joint through rates through Spokane via the Milwaukee from mills on the Santiam Branch of the Oregon Electric, which terminates at Dollar and Foster, Oregon, to any point on the Milwaukee other than Mobridge, South Dakota, and such rates [fol. 871] from the remainder of the Spokane, Portland and Seattle System are restricted in their application to certain points on the Milwaukee, it is impracticable, and, in the case of shipments from the Santiam Branch, impossible, to route shipments in such manner that these retail yards would be in position to purchase them. This situation bars these retail yards from a very important source of supply.

If competitive through rates were available via the Milwaukee Railroad and its connections to Chicago and points beyond, shippers would be in safer position to route transit cars over the Milwaukee via Spokane, thereby making these cars available to these South Dakota and western Minnesota retail yards. It is the desire of these members that routing be provided so that they are in a position to enjoy the same privileges as yards located in adjacent territory on other lines which are in direct competition with them.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will now recess for lunch until 2:00 p. m.

(Whereupon, at 12:30 o'clock p. m., Tuesday, November 9, 1954, a recess was taken to 2:00 o'clock p. m., of the same day.)

[fol. 872] AFTER RECESS 2:00 p. m.

Exam. Dishman: The hearing will be resumed, Gentlemen.

Mr. Maguire: Mr. Meyer.

LLOYD MEYER resumed his testimony as follows:

Direct examination.

By Mr. Maguire (Continued):

Q. You had completed reading your prepared statement, had you not, Mr. Meyer?

A. Yes, I had.

Q. Have you anything to add at this time?

A. I have nothing further.

Mr. Maguire: You may cross-examine.

Cross examination.

By Mr. Rockwood:

Q. Mr. Meyer, you testified that you were subpoenaed to appear here as a witness?

A. That is right.

Q. When were you subpoenaed?

A. Last Saturday. I think that was November 5th.

Q. In Minneapolis?

A. Yes, sir.

Q. And, did you prepare this mimeographed statement after you received that subpoena, or before?

A. That was prepared before.

Q. In anticipation of the fact that you would be subpoenaed?

A. That is right.

[fol. 873] Q. You were told by the Milwaukee that they would subpoena you?

A. Well, yes, that is true.

Q. Did you have any conferences with any Milwaukee officials in the preparation of this prepared statement, or is it entirely your own effort?

A. This is my prepared statement.

Q. That doesn't quite answer the question. Did you have any assistance?

A. No, sir.

Q. Or any consultation with others?

A. As a matter of fact, I prepared this statement practically a year ago.

Q. That is very interesting. Does your Association, or you, for your Association, have occasion from time to time to make proposals to common carriers by railroads for rate changes?

A. That is right, we do.

Q. What is the normal procedure for initiating such rate changes, Mr. Meyer?

A. Well, if you think there is any possible chance of the carrier willingly going ahead and working with you and publishing what you desire, you would normally go to the carrier. Otherwise, you file a complaint.

Q. With whom?

A. With the Interstate Commerce Commission, if it is interstate traffic.

[fol. 874] Q. On occasions, do you make requests that certain matters be put on the docket of freight bureaus such as the Transcontinental or the North Pacific Coast Freight Bureau?

A. That is true. I have not, not with my connection with this Association, I have not made any, but that is normal procedure, yes.

Q. Did you make a request of any carrier, common carrier by railroad, for changes in rates and routes in line with what we will characterize as complaints of your members as described in your prepared statement?

A. This was my prepared statement, which would be a complaint with the Commission, and is the outcome of my prepared statement. This statement is practically the same as the complaint that I intended to file while I was working on it a year ago now.

Q. That was before you knew that the Milwaukee contemplating the present case?

A. That is correct.

Q. All right. When did you learn of the Milwaukee contemplating the present case?

A. Well, now do you mean through the grapevine or do you want to know when it was actually brought to be forcibly?

Q. Through any source?

Mr. Maguire: Just a moment. Are you calling for hearsay from the witness? Grapevine, I think, is one of the most aggravated forms of hearsay that I know of.

[fol. 875] Mr. Rockwood: Are you objecting?

Mr. Maguire: I am objecting if it is grapevine information, yes, sir.

By Mr. Rockwood:

Q. What was your source of information that the Milwaukee contemplated filing this complaint?

A. Well, when the freight traffic manager of the Northern Pacific Railway came into our office and talked to the Secretary of our Association.

Q. When was that?

A. I believe it was—I can't give you the definite time, but I would say it was six months ago.

Q. That was the first that you heard of it?

A. That was the first that I knew definitely that there was something in the air.

Q. About May, 1954?

A. It was back there. I wouldn't say definitely it was in May, but it was at least six months ago.

Q. Did you ever make a request of any rail carrier for adjustments in rates of the nature which you have outlined in this prepared statement?

A. Directly with the carriers; is that your question?

Q. That is right.

A. No.

Q. You did not.

A. No.

Q. Did you ever request that changes of this nature be [fol. 876] put on the Transcontinental Freight Bureau docket?

A. No.

Q. Did you ever make a complaint to anyone prior to your participation in this case of the adjustment of which you are now complaining as outlined in your statement?

A. No.

Q. Now, you say that you are not representing all of the members of your Association?

A. No, sir.

Q. Is that right?

A. That is right.

Q. There are some 2300 members?

A. Yes, sir.

Q. 2300 retail yards?

A. That is right.

Q. The membership would be less?

A. The membership would be less— Well, no. There would actually be that many members, but I might explain that you have headquarter yards. You have some yards that have maybe fifty yards, and each one of those yards is a member of our Association. So, we would have twenty-three hundred members. We have that many members.

Q. But of corporations or individuals or partnerships owning yards, there are less than twenty-three hundred who are members of your Association?

[fol. 877] A. Yes.

Q. How many corporations, partnerships or individuals who own yards are members of your Association?

A. Would you mind repeating that, please?

Q. How many yard owners, whether they own one yard apiece or ten yards or fifty yards—how many yard owners are members of your Association?

A. I couldn't answer that.

Q. Has that been compiled?

A. I believe the information would be available, but I don't have it with me.

Q. As many as one thousand or more than one thousand?

Mr. Maguire: Just a minute. The witness says he doesn't know, and now counsel is trying to get an answer from him.

Mr. Rockwood: May I have an answer to my question?

Exam. Dishman: Can you give us a definite figure?

Mr. Rockwood: Not a definite figure. I am not asking for that, Mr. Examiner. I want to know approximately.

Mr. Maguire: I would think the fair question would be whether he can give an approximate figure.

Mr. Rockwood: That is what I am asking for.

The Witness: I would hesitate to give it because I might be two or three hundred off, and I would just hate to make that statement because I couldn't back it up.

Exam. Dishman: Are you able to give any figure?

[fol. 878] The Witness: Well, now, this is purely a guess. I would say there would be, perhaps, fifteen hundred owners of yards.

Mr. Rockwood: Thank you.

By Mr. Rockwood:

Q. You have referred to the fact that you represent only those members who have complained to you. How do those complaints come to you, now?

A. They came to me by mail, and I had several telephone calls.

Q. Do you have with you the copies of those complaints that came to you by mail?

A. I do.

Q. Do you have them here?

A. I do.

Q. May we see them? Will you let us examine them?

A. Well, I have no objection except I think if they are going into the record that they should be read into the record rather than passed around.

Q. I didn't suggest that they be passed around, but if you want to read them into the record, that is all right. How many do you have? What is the volume?

A. I have seven letters here.

Q. Will you please state the names of the concerns that wrote those letters, and the dates of those letters, please, and also where they are located, and, if you can, I would appreciate it if you would state the railroad by which their yards are served?

A. Well, the very first one has 28 yards. I have the in-
[fol. 879] formation on which railroads they are located; if you want it in the record, I will be glad to put it in there.

Q. Go ahead; tell us.

A. The first one is from the Denniston and Partridge Company at Newton, Iowa.

Q. What is the date of the letter?

A. June 29, 1954.

Q. What is the second one?

Mr. Maguire: Is that the one that had the 28 yards?

The Witness: That has 28 yards.

Mr. Maguire: All right.

By Mr. Rockwood:

Q. Give us the second one.

A. The second one is from the Standard Lumber Company at Winona, Minnesota.

Q. The date, please?

A. The date is August 27th, but I have correspondence prior to that date. The particular letter I have here of his complaint is dated August 27th.

Q. How many yards does he own?

A. I don't have his complete list, but I think it is 71 or 72 yards.

Q. What is the next one?

A. The next one is from the Consumers Lumber Company, Spirit Lake, Iowa. That letter is dated June 25th.

Q. How many yards does he own or does that company own?

[fol. 880] A. He has four yards.

Q. The next one?

A. The next one is the E. W. Oates Company, Storm Lake, Iowa. That is dated June 26th.

Q. Would you tell us how many yards he owns?

A. I don't have the information on that one. It wouldn't be over two or three.

Q. All right. The next?

A. The Smith Lumber Company, Milford, Iowa, dated July 13th, and I have a memorandum on here that there are two yards.

Mr. Torinus: What is the date of that?

The Witness: That is July 13th.

By Mr. Rockwood:

Q. What is the next one?

A. Now, I could be mistaken on that. It could be only one yard on this Milford one. I have a memorandum here that we had two members in that town, but this man that is complaining here I believe has only one yard.

Q. All right, the next one?

A. The next one is the C. W. Chapman Lumber Company, Waterloo, Iowa. That letter is dated June 28th. He has six yards.

Q. The next one?

A. The next one is from the Hart Lumber Company at Newton, Iowa, and the letter is dated June 29th, and they have four yards.

Q. All right. The next.

A. Now, that completes the mailed communications.

[fol. 881] Q. Now, tell me this: Did you, as manager of the Association, or in any other capacity, address a letter to your members or any portion of your members, which was the generating cause for these letters that you have referred to?

A. No, sir.

Q. These were simply spontaneous letters that came in to you?

A. Yes, sir.

Q. You had never heard of their complaints before?

A. I wouldn't say that. We have had complaints for years on this same subject, but these are the latest ones that I have.

Q. You say, for years?

A. Yes, sir.

Q. Do you have with you any letters other than those which you have enumerated for us?

A. No, I do not.

Q. And, are you able to say positively that the subject of the complaints which have been going on for years is precisely the same as are described in your mimeographed statement?

A. For the three years that I have been with the Association, the answer would be yes.

Q. Is this Santiam situation that you referred to—the fact that the rates do not apply from the Santiam Branch, is that one of the general subjects of complaint that you have had?

A. That is true.

Q. And the fact that the rates from the S. P. and S. to the Milwaukee do not apply to points west of Mobridge, [fol. 882] South Dakota, with the exception of Vernonia,—is that another subject of complaint?

A. That is true.

Q. Those two are the principal complaints that you have had?

A. Well, those are two complaints that we have had.

Q. Are they the principal complaints?

A. Well, it is kind of hard to answer where "principal" stops and where it starts. I would say that all of our complaints and allegations that are in my statement are equal, but those are two of the complaints.

Q. Who owns the yard at Linton, North Dakota?

A. The Central Lumber Company of Minneapolis.

Q. And the Central Lumber Company also owns the yard at Mobridge, South Dakota?

A. That is right.

Q. How many yards does the Central Lumber Company own?

A. They have 66 yards.

Q. Are those located generally in Wisconsin, Minnesota, North and South Dakota?

A. None in Wisconsin. They are located in North and South Dakota and Western Minnesota.

Q. Do they have yards located on the Great Northern in Minnesota and North Dakota?

A. I just can't answer your question. They have so many yards, I just can't remember their locations.

Q. Do they have any yards other than Linton located [fol. 883] on the Northern Pacific?

A. I can't answer that.

Q. Do they have any yards other than at Mobridge located on the Milwaukee?

A. Oh, yes.

Q. How many yards do they have located on the Milwaukee?

A. Eight yards.

Q. Eight yards?

A. Yes, sir.

Q. What are their locations on the Milwaukee; those eight yards?

A. I am wrong in that. There are more yards than that. There are eight yards in Western Minnesota located on the Milwaukee. I do not have their yards in North and South Dakota.

Q. So, you are unable to tell us whether they have any other yards in South Dakota other than Mobridge, located on the Milwaukee?

A. I can recall that they have one at Faith. They have one at Isabel. That is all that I can recall.

Q. What is the name of your member that has a yard in Lat'rosse, Wisconsin, and Montevideo, Minnesota?

A. The Standard Lumber Company.

Q. How many yards does the Standard Lumber Company have?

A. Well, I believe it is 71 or 72.

Q. How many of those are located on the Great Northern?

A. I do not know, but they have yards on the Great Northern?

[fol. 884] Q. How many are located on the Northern Pacific?

A. I can't answer that either.

Q. How many yards are located at points served solely by the Milwaukee?

A. Eight.

Q. Eight?

A. Yes, sir.

Q. All right. And those eight yards served solely by the Milwaukee, as I understand it, that would include the yard at Montevideo, Minnesota?

A. That is correct.

Q. But it would not include the yard at LaCrosse, which is served by lines other than the Milwaukee; is that correct?

A. Will you read that, please?

(Question read.)

A. I am still confused on that question. Would you mind rephrasing your question.

Q. I understood your answer was that the Standard Lumber Company had eight yards at points served solely by the Milwaukee?

A. And I want to correct that. It should be seven, because they have a yard at Winona, and there are other carriers serving Winona, so my answer, so far as the Standard is concerned, should be seven.

Q. All right. Well, that seven then would include the yard at Montevideo?

A. That is right.

[fol. 885] Q. But would not include the yard at LaCrosse, because LaCrosse is served by roads other than the Milwaukee?

A. That is correct.

Q. Now, at those yards served solely by the Milwaukee, such as Montevideo, it would be possible to ship in a car, and partially unload at one of those yards, and move over to the other yard and complete unloading, would it not?

A. Served exclusively by the Milwaukee?

Q. Yes.

A. I believe the only yard that you could do that with would be at Winona.

Q. That is not served exclusively by the Milwaukee.

A. Well, then, my answer will have to be no.

Q. You couldn't partially unload at Montevideo and move to any other yard served by the Milwaukee, of the Standard Lumber Company, is that right? Is that your testimony?

A. Well, your question is a little hard to answer, but the fact that I right offhand do not know the location of

all of these towns that we have shown here, these other seven towns. Now, I believe that you could go to—for instance, Blooming Prairie, and stop at—well, I can't answer your question?

Q. You can't do that?

A. Well, you couldn't go to Blooming Prairie.

Q. Well, suppose a carrier of lumber started out from a point on the S. P. and S., and routed, we will say, [fol. 886] S. P. and S. to Spokane; and from Spokane, Northern Pacific, to a point on the Northern Pacific, would you be able to partially unload at such Northern Pacific point and complete unloading at a Milwaukee point; at any Milwaukee point, do you know?

A. Well, you could at some Milwaukee points.

Q. At any points served exclusively by the Milwaukee?

A. Yes.

Q. Give us an example of where you could do that, please?

A. I believe that you could do that at Hastings, Minnesota, and go on to Winona as the final destination.

Q. That is, via Minnesota Transfer?

A. Yes.

Q. Well, I should have made my question clear. If the Northern Pacific, of course, gets the full haul from Spokane to Minnesota Transfer, then you can move beyond Minnesota Transfer by any one of several of the so-called Western Trunk Line carriers?

A. That is right.

Q. And you could unload partially at Milwaukee points and complete the unloading at another Milwaukee point?

A. That is right.

Q. At a point short of— Of course, Hastings is not on the Northern Pacific, is it?

A. Well, no, but your question—

Q. My question was, could you move a car over that route, partially unload at any Northern Pacific point and then move to a final destination at a Milwaukee point?

[fol. 887] A. Yes.

Q. What points— At what Northern Pacific point could you unload it?

A. Well, if your routing provided Northern Pacific-Minnesota Transfer, you could stop to unload at St. Cloud on the Northern Pacific and go on to any point beyond the Transfer on the Milwaukee.

Q. As long as the car goes through the Transfer?

A. That is right.

Q. Unless the car went through the Transfer, you wouldn't be able to do it, would you?

A. No.

Q. If you moved it via Northern Pacific to a point short of the Minnesota Transfer, could you partially unload at the Northern Pacific point and then complete unloading at a Great Northern point?

A. Well, I do not know where. I do not know where you could do that.

Q. Well, isn't it pretty much true that when a car starts out on one route, they will not allow diversion across country to a point on the competing line?

A. That is true.

Q. Isn't that the policy of the Milwaukee itself?

A. I do not know what the policy of the Milwaukee is.

Q. Whatever the policy is, isn't that the fact, or, rather, [fol. 888] the effect of the rates that the Milwaukee publishes?

A. Well, I don't believe that I am qualified to answer that question.

Q. But you were qualified to state the facts as to Linton and Mobridge?

A. That is right.

Q. You checked that out?

A. That is right.

Q. You have not checked out other cities to determine the general pattern, or a general pattern which might indicate the policy of the Milwaukee? You haven't checked that out?

A. I have nothing to do as far as the policy of the Milwaukee is concerned. I couldn't answer for them.

Q. You haven't attempted to determine what it is by an examination of their tariffs?

A. Well, I know—I try to read the tariff, and that is about as far as I can go. I go by what the tariff says.

Q. You have, as I read this prepared statement of yours, two complaints, one with respect to rates west of Mobridge on the Milwaukee, and then on the third page of your prepared statement, you raised the point with respect to rates from the Santiam Branch. If the S. P. and S., on proper request of the shipper, and its tariff being on the proper Transcontinental Freight Bureau Docket, were willing to apply, from stations on the Santiam Branch, rates on the same basis as apply from other main line [fol. 889] Oregon Electric Company points to Milwaukee destinations, your complaint with respect to the Santiam Branch would be taken care of, would it not?

A. As far as the rates and routines were concerned, yes.

Q. Now, if the S. P. & S., likewise upon proper application of a shipper, or proper docketing on the Transcontinental Freight Bureau docket, were willing to make the rates from all S. P. & S. points via Spokane on lumber, and the Milwaukee, applicable to all territory east of Spokane, the basis of rates that are now applicable to points east of Mobridge, then your complaint would be taken care of in so far as it describes this situation, as to which Vernonia is an exception, is it not?

Mr. Maguire: Just a minute. I think the witness is entitled to clarification. He said points east of Spokane. I think the question should be clarified. I think he should say as to which points on the Milwaukee Railroad.

Mr. Rockwood: That is right. From S. P. and S. points to Spokane, and effective on the same basis as they are now in effect on the Milwaukee east of Mobridge, your complaint would be substantially taken care of, would it not, in so far as that is concerned?

The Witness: If you will insert there "just and reasonable rates", my answer would be yes.

By Mr. Rockwood:

Q. I will not insert in the question "just and reasonable rates."

[fol. 890] A. Then I may want to change my answer.

Q. Your idea of just and reasonable rates may be slightly different from mine.

Q. But your complaint, as you spell it out on the top of page 2, which you make the subject of the paragraph beginning at the bottom of page 1, is that rates do not apply to points west of Mobridge, isn't that right, with the exception of Vernonia?

A. I think I tried to make it clear in here that we do have rates on the main line from Mobridge west to the Montana line through the intermediate application of the tariff.

Q. Yes, that is right, through the intermediate application of the tariff?

A. Yes.

Q. But except for the rates from Vernonia, and points taking the same rates by intermediate application to some points west of Mobridge, rates from the S. P. and S. apply via—apply to points only east of Mobridge. That is correct, is it not?

A. I believe that that is correct, yes, sir.

Q. Now, if that situation, as it now stands with respect to territory on the Milwaukee east of Mobridge, were extended all the way back to Spokane, you would have a large measure of the complaints of your members taken care of, would you not?

A. Well, from Mobridge, as I understand your question now, you are just speaking of the Milwaukee line west of Mobridge in North Dakota and South Dakota, is that correct.

[fol. 891] Q. West of Mobridge and on west.

A. Yes.

Q. All right.

Mr. Rockwood: Has anybody a copy of Exhibit No. 9 that I can look at?

Mr. Maguire: Yes.

Mr. Rockwood: May I borrow that to show to the witness.

Mr. Maguire: The witness has a copy of Exhibit 9 that somebody gave to him. In fact, we gave it to him.

By Mr. Rockwood:

Q. Now, am I correct in my understanding that from the territory on the S. P. and S. shown in the lefthand side

of Exhibit 9, colored in yellow, the rates apply to Milwaukee territory east of Mobridge, shown colored in yellow, with the exception of the points colored in red, certain points colored in red?

A. That is correct.

Q. Now, if that yellow line on the Milwaukee east of Mobridge were extended on the Milwaukee all the way back to Spokane, that would largely correct the complaints which your members now have, would it not?

A. You have included something in your question there that I am not interested in. I am not interested in this section in Montana itself at all. I am only interested to the Montana line.

Q. All right.

A. In answer to your question, it would be yes, as far [fol. 892] as this part of the complaint is concerned.

Q. That is right. If the yellow line,—as far as you are concerned, if the yellow colored line of the Milwaukee were extended west of Mobridge, including the branch lines west of Mobridge, out to the Montana line, your members would be quite happy, would they not?

A. That is right. (Nodding head.)

Mr. Maguire: That was not the witness' answer.

Mr. Rockwood: He nodded his head.

Mr. Maguire: What was your answer? I would like to be heard on that, although I don't like to interfere with cross-examination, but I think that those questions are a little bit deceptive because the witness answered in the first place—he said it would take care of that part of the complaint. That was the witness' answer. Now, then, counsel attempts to summarize that by asking the question, "That would take care of all of your complaints", and I think that is misleading the witness, and I believe the witness is entitled to protection on that point.

Mr. Rockwood: I apologize if I appear to be misleading the witness. I meant on that subject I was talking about of the application of the rates to points west of Mobridge.

Mr. Maguire: I object to that because the answer has already been given to the preceding question.

Mr. Rockwood: All right.

By Mr. Rockwood:

Q. Now, again, on this copy of Exhibit 9, the Santiam Branch of the S. P. and S. shown colored in red indicate [fol. 893] that the rates do not apply from the Santiam Branch to any points on the Milwaukee; is that your understanding?

A. That is my understanding. That is correct.

Q. These points on the Milwaukee shown colored in red are points to which no rates from S. P. and S. points apply. That is your understanding, and has no significance in connection with the coloring of the Santiam Branch on this map. Do you so understand?

A. That is my understanding.

Q. All right. And, if the rates were made applicable from the Santiam Branch of the S. P. and S., through proper procedure, to points on the Milwaukee east of the Montana-Dakota line, that part of your complaint would be taken care of, would it not?

A. Now, when you say east of this line, you mean that the entire Minnesota, and Iowa and North and South Dakota territory, or are you restricting it in your question?

Q. I mean the entire Milwaukee system east of the North Dakota line to the extent that rates are now applicable from points colored in yellow from points on the S. P. and S. to points colored in yellow on the Milwaukee on this map?

A. That would take care of that section of my complaint.

Q. Yes.

A. That is right.

Mr. Rockwood: Mr. Examiner, I would like to have the opportunity to examine the seven letters, I think it was seven, that Mr. Meyer referred to in the answer to my [fol. 894] questions. If he will undertake to have them reproduced and made an exhibit for the record, that will be satisfactory, or if he will let me see them, I will undertake to have them reproduced and made a part of the record.

Exam. Dishman: What do you say about that?

Mr. Maguire: I do not think the letters themselves are particularly relevant, and I will object to them being introduced as exhibits in the case, but it certainly is up to Mr. Meyer as to whether he wants Mr. Rockwood to look at them. I have no objection to him showing them to Mr. Rockwood, certainly.

The Witness: I have no objection to Mr. Rockwood seeing them. I do object to having them reproduced. I believe that the towns we have mentioned should suffice for his information, and I do object to our members being displayed all around in all parts of the country.

Mr. Rockwood: Mr. Examiner, of course there is a lot of hearsay in this prepared statement. He talks about the members who have complained to him, and the members that complained on particular subjects. That is hearsay. I did not object to it. I certainly have the right to see the nature of the complaints so far as that is concerned.

Exam. Dishman: Well, the witness says that you may examine those letters.

Mr. Rockwood: May we examine them?

The Witness: I have no objection.

[fol. 895] Mr. Rockwood: May we examine them, and have about a ten minute recess?

The Witness: Just a minute. Where do you want to take these?

Mr. Rockwood: Right here.

The Witness: Are these going to be passed around. I agreed to let you see them.

Mr. Rockwood: All right.

Mr. James: I think the Examiner should decide that question.

Exam. Dishman: Do you have any objection to all defendants seeing them?

Mr. Boe: I would like to say this—

Exam. Dishman: Just a moment. Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will take a short recess at this time.

(Recess.)

Exam. Dishman: The hearing will be resumed, please.

Mr. Rockwood: Mr. Examiner, Mr. Meyer has handed to us letters which have already been referred to in the record by him from seven of his members. I would like to have those read into the record by Mr. Meyer, he having objected to, and possibly very properly, allowing us to take these to have them reproduced by photostat. The ones that I will want are the letters from the E. W. Oates Company, Storm Lake, Iowa, dated July 1, 1954, addressed to the Northwestern Lumbermens Association, Minneapolis, Min- [fol. 896] nesota, and the letter attached thereto by a clip from the E. W. Oates Company, Storm Lake, Iowa, dated June 26, 1954, addressed to the "Interstate Commerce Commission, Chicago, Illinois; Gentlemen."

The letter from Consumers Lumber Company, Spirit Lake, Iowa, dated June 25, 1954, addressed to Mr. W. E. Badeaux, Secretary, Northwestern Lumbermens Association, Minneapolis, Minnesota, with copies indicating as being sent to Mr. Toepel of the Iowa Retail Lumber Association, and Mr. A. C. Van Sickel, Milwaukee Railroad, Des Moines, Iowa.

And the letter from the Smith Lumber Company, Milford, Iowa, dated July 13, 1954, addressed to Northwestern Lumbermens Association, attention Mr. W. H. Badeaux.

The letter from C. W. Chapman Lumber Company, Waterloo, Iowa, dated June 28, 1954, addressed to Northwestern Lumbermens Association, Minneapolis.

The letter from the Hart Lumber Company, Newton, Iowa, dated June 29, 1954, addressed to the Northwestern Lumbermens' Association, Minneapolis, attention Mr. W. H. Badeaux; and

The letter from the Denniston and Partridge Company, Newton, Iowa, addressed to the Northwestern Lumbermens' Association, Minneapolis, attention Mr. W. H. Badeaux, Secretary.

The letter from Standard Lumber Company, Winona, Minnesota, dated August 27th, 1954, addressed to Mr. W. H. Badeaux, Northwestern Lumbermens' Association, Minneapolis.

[fol. 897] With the understanding that those will be read into the record, I am quite willing to have Mr. Meyer withdrawn at this time, if you wish me to put that on the record.

Mr. Maguire: I would like to withdraw Mr. Meyer at this time then and put on another witness.

Mr. Rockwood: May the record show I am handing back to Mr. Meyer the letters that he so kindly handed to me to look at.

Exam. Dishman: Mr. Rockwood, you have read the entire group of letters, have you not?

Mr. Rockwood: Yes, sir.

Exam. Dishman: You want the whole seven of them read into the record?

Mr. Rockwood: Yes, the entire group that he handed to me.

Mr. Maguire: There are no omissions in that request?

Mr. Rockwood: No.

Exam. Dishman: All right. The witness is excused temporarily.

(Witness excused.)

Exam. Dishman: Call your next witness.

Mr. Maguire: All right.

Mr. Rockwood: May the record show also that Mr. Meyer's cross-examination has not been completed?

Mr. Maguire: Oh, sure.

Exam. Dishman: Yes.

Mr. Rockwood: Thank you.

Mr. Merrill: We will call Mr. Devine.

[fol. 898] JAMES W. DEVINE was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Will you state your name, address and occupation, please?

A. James W. Devine, traffic manager, Carr, Adams and Collier, Dubuque, Iowa.

Exam. Dishman: You have been previously sworn?
Mr. Maguire: He was.
The Witness: Yes, sir.
Exam. Dishman: All right.

By Mr. Merrill:

Q. How long have you been connected with that company?
A. Five years.
Q. And how long have you served as traffic manager?
A. Since January 1st, 1952.
Q. What is the business of your company?
A. Manufacturer of building woodwork.
Q. Where is the principal office and place of business of your company?
A. Dubuque, Iowa.
Q. Now, where—is that where the processing plant is located?
A. Yes, sir.
Q. What lumber materials do you use in connection with your business?
[fol. 899] A. Pine lumber.
Q. And, generally, what is the source of supply of such lumber?
A. Our lumber comes from the Pacific Northwest, Oregon, and Washington, in so far as the northwest is concerned; also other Coast points, Pacific Coast points.
Q. And do you draw lumber from territory served by the S. P. and S. and the Oregon Trunk railways?
A. Yes, sir.
Q. With respect to your business, at Dubuque, on what railroad is that located?
A. We are located on the Milwaukee railroad at Dubuque, as well as the Illinois Central, the Great Western and the Chicago, Burlington & Quincy.
Q. Do each of those railroads serve your plant at Dubuque?
A. Yes, sir.
Q. After you manufacture the sash and doors at this plant, in what area are they sold?

A. Well, principally Chicago and east, southeast, southwest; also in Western Trunk Line territory locally to Dubuque.

Q. I would like to go over with you your presently available routes that you have on lumber which might originate on the S. P. and S. or the Oregon Trunk Railway points. You do presently have a route from S. P. and S. origins or Oregon Trunk origins to Spokane; thence the Great Northern or the Northern Pacific to Minnesota Transfer, and thence Milwaukee or other lines to Dubuque, is that [fol. 900] correct?

A. That is right.

Q. And you also have a route with joint through rates applicable from the same origins to Spokane, and thence the Milwaukee Railroad all the way to your destination of Dubuque, have you not?

A. That is right.

Q. And from common points on the S. P. and S. or the Oregon Trunk, you have a route available, with joint through rates, either Southern Pacific or Union Pacific, to Marengo, then the Milwaukee to destination?

A. Yes, sir.

Q. Or the Union Pacific to Marengo and then Milwaukee to destination; is that correct?

A. Yes, sir.

Q. All right. Now, are those routes, which we have mentioned, which you now have, with joint through rates, applicable—of those routes, which of those routes do you presently use?

A. You mean the origins on the—

Q. On the S. P. and S. or Oregon Trunk.

A. Via Spokane, thence Great Northern or Northern Pacific to Minnesota Transfer and thence via one of our local carriers, including the Milwaukee.

Q. Now you have stated you also have a route from Spokane on the Milwaukee to destinations in Iowa, or to Dubuque, Iowa. Why do you not use that route?

[fol. 901] A. We transit that at Dubuque, and our transit is restricted on such shipments.

Q. In what respect is it restricted?

A. Well, we are restricted to some points on the Milwaukee, and all off-line points beyond the Milwaukee.

Q. You are restricted, in other words, so you can not reach certain points on the Milwaukee nor any off-line points; is that right?

A. That is right.

Q. When you use the routing Milwaukee Railroad from Spokane to Dubuque?

A. That is right.

Q. And with respect to the route via Marengo, why not use that route?

A. On that we are restricted also by the Milwaukee on transit; that is via Milwaukee and cross lake routes to points, eastern points north of the Ohio River.

Q. So that if you want to move east of Chicago, you are restricted to across-the-lake routes, and can only reach the territory north of the Ohio River; is that correct?

A. That is right, via the Marengo route.

Q. What advantage would there be to you in this case if the relief which the Milwaukee herein seeks were to be granted?

A. You mean so the rate would apply via the Milwaukee in competition?

[fol. 902] Q. So that there would be joint through rates on a route through Spokane; from Spokane, or from point of origin to Spokane; thence the Milwaukee Road to Dubuque, or to the Transfer and another line from the Transfer to Dubuque, and then to any points on or off the Milwaukee Road at a joint through rate?

A. It would be an additional route for us, and also in addition to that, we have a local traffic office of the Milwaukee Road at Dubuque, which is convenient for us in using them as a carrier. There are occasions when we have to trace cars for instance, and it is more convenient to handle those with the local traffic office. Otherwise, it would entail phone conversations, long distance telephone calls, and in that regard, why, we feel that the Milwaukee routing would be favorable to us.

Q. If a car should be moving via Great Northern or Northern Pacific between Spokane and the Transfer and you wished to find out in the quickest time where that car is, does that entail a long distance telephone call to the

Great Northern or the Northern Pacific for that information?

A. Well, it would in this regard: If I were anxious for that car, I think the personal contact is better and means more than going through the delivering carrier, for instance.

Q. So, you would have to make this long distance call to the Northern Pacific or the Great Northern office?

A. That is right.

Q. They have no representative in Dubuque, have they? [fol. 903] A. Not locally to us, no, sir.

Q. Have you experienced a car shortage in past years on shipments originated on the S. P. and S. or the Oregon Trunk?

A. There have been car shortages in the past. I can't say that we are experiencing them at the present time. You mean, in so far as lumber is concerned?

Q. Yes; during the past two years I presume you haven't had very much difficulty?

A. I can't say that we have, no, sir.

Q. Is it your experience that these car shortages are recurrent?

A. They could possibly be.

Q. And, in the event a car shortage does occur for shipments originating on the S. P. and S. Railway Company, would you say that there would be any advantage to your company should the Milwaukee Road participate in the long haul of this traffic from Spokane to destination?

Mr. Rockwood: Just a minute. I object to that, because there has been no foundation laid for it. He said he has had no car shortage, and your question presupposes that there has been.

Mr. Merrill: It presupposes there may have been one.

Mr. Rockwood: There may have been several. There may have been several car shortages, but he says they have had no car shortages.

Mr. Merrill: I submit the question as asked.

Mr. Maguire: Might I add this. I have been listening to [fol. 904] this testimony. He said while there have been none in the past couple of years, there have been shortages in the past.

Mr. Rockwood: In this territory, but not on the S. P. and S.

Exam. Dishman: What was your answer?

The Witness: I say in the past, I think there have been car shortages on the Pacific Coast, which would possibly include the S. P. and S.

Exam. Dishman: Well, the witness may answer the question. Do you understand the question?

The Witness: Yes. In regard to a car shortage, if we had those routes, it could very well be helpful in that there would be the Milwaukee, and it could very possibly furnish the necessary equipment, and they would remedy that condition of the car shortage on the Coast. In that regard I think it would be helpful.

By Mr. Merrill:

Q. Now, if the relief which the Milwaukee Railroad herein seeks were to be granted, would you allot a certain proportion of the traffic to the Milwaukee Railroad at Spokane for the long haul from Spokane either to the Transfer or to your destination of Dubuque?

A. We would use the route, yes, to a degree, I would say.

Q. You would not intend to use it entirely to the exclusion of the other lines operating west of Spokane?

A. No, sir.

Q. And, as to the carriers which you now use from the Minnesota Transfer to Dubuque, would you anticipate there [fol. 905] would be any change in the route from the Transfer to destination?

A. No, sir.

Mr. Merrill: That is all, sir.

Exam. Dishman: Mr. Rockwood?

Cross examination.

By Mr. Rockwood:

Q. Will you please enumerate the pine mills on the S. P. and S. lines from which you have made purchases?

A. Well, I am not at liberty to name our sources of supply. I am afraid I could not answer that.

Q. In other words, you do not want to answer that?

A. No, sir.

Q. Will you tell us the stations from which you buy pine lumber on the S. P. and S. lines?

A. I will not, no.

MOTION TO STRIKE TESTIMONY OF THIS WITNESS AND RULING THEREON

Mr. Rockwood: I move that all of the testimony of this witness be stricken if we are not permitted to cross-examine him on it.

Mr. Maguire: I do think, Mr. Examiner, that what is the private business concern of the witness can very well be held from the testimony if the witness feels it would be betraying any business secrets of his employer, and he said that is what it would be.

By Mr. Rockwood:

Q. Do you feel that giving the stations would be revealing a privileged matter?

A. Well, I really don't feel at liberty to disclose or to discuss our points of origin other than the fact that we do [fol. 906] receive lumber on the S. P. and S. and the Oregon Trunk.

Mr. Rockwood: Mr. Examiner, if this man submits himself, if this gentleman submits himself and opens up his affairs to the extent which he has, he is subject to cross-examination, and there is nothing privileged in the information which I am seeking from him. If he did not wish to disclose that information and subject himself to cross-examination, he should have refrained from submitting himself as a witness here unless he were subpoenaed, and if he were subpoenaed, he would be required to answer questions on cross-examination so long as there is nothing which is privileged, and there has been nothing asked of him which is legally privileged.

Exam. Dishman: On what basis do you state that giving that information would be revealing privileged matters?

The Witness: In the respect that it is our source of supply of lumber.

Exam. Dishman: And you don't want your competitors to know your sources of supply?

The Witness: I don't think our company would appreciate having their sources of supply discussed.

Mr. Rockwood: My motion to strike stands.

Mr. Maguire: Now, Mr. Examiner, I think that counsel is blowing this up all out of proportion. This witness, in effect, has testified that there would be certain benefits. His testimony was very clear that the only conclusion that can be drawn from it is that in so far as rates, additional [fol. 907] rates of which he is now deprived, that is, rates that are not now available to him by any route, are not involved in this. This is not a vital point in the case. As a matter of fact, while the witness does show it is in his interest, that he feels it is in his interest to have these extra routes, the main purpose, I will be frank, in calling him, was to show that the discrimination which is being exercised against us by the S. P. and S. under Section 3 (4) of the Act is a substantial one. This is one of many witnesses who will show the substantiality of the discrimination, and I think that this is merely a heckling and harassing tactic to move to strike the testimony of this witness.

Mr. Rockwood: This is a novel situation, if the Examiner please, when a witness is permitted to rule on the relevancy of the cross-examination and to pick and choose as to what he will or will not answer as fits his fancy.

Mr. Maguire: If the witness states he has no authority to answer that question, I think that should be sufficient.

Exam. Dishman: The point of it is, Mr. Rockwood, he is not passing on what he can answer on cross-examination, but it is not the policy of the Commission to direct a witness to reveal information that is of a privileged nature which would affect the business with respect to competitors. So, is it in that nature?

Mr. Rockwood: If the Examiner please, the provision of [fol. 908] the Interstate Commerce Act prohibits a carrier from disclosing information relating to the business of an individual shipper.

Exam. Dishman: That is right.

Mr. Rockwood: But if an individual shipper exposes himself by direct examination of the witness, he thereby waives any right which he would otherwise have to keep things to himself if he might choose to do so. He is wide open for cross-examination when he gets called as a witness.

Mr. Maguire: I would like to hear some authority for that rather far-fetched statement, and I don't think there is any foundation for it, and I think that counsel knows as well as I do that a witness, or when a witness says that he has neither authority nor the privilege of giving the information, the Commission has not insisted that he answer a question of this kind, and I know of dozens or hundreds of cases where it has occurred.

Mr. Rockwood: I have never heard in all of my practice of the law, a rule to the effect that a witness can determine for himself whether he will or will not answer a question on cross-examination.

Mr. Merrill: May I point out that this witness has testified to certain advantages which he can foresee if the relief sought by the Milwaukee is granted. Number 1, the convenience in tracing cars; Number 2; if there is a car shortage, he has another railroad to call upon for cars. He has also testified that if this relief is granted, the Mil- [fol. 909] waukee would get a fair share of this traffic from Spokane on this long haul movement. Now, regardless of the origins from which he ships on the Oregon Trunk or the S. P. and S., the same advantages accrue that are applicable either from one point or from another, and routed via the Milwaukee; that would follow whether the shipments originated at one point or the other. I think that counsel is squeezing the point rather hard and bringing out the last drop where there is not much to take out of it.

Exam. Dishman: The witness' answer will be allowed to stand and when weight is accorded that statement, your statements regarding it, Mr. Rockwood, and others, will be taken into consideration. Do you have any other questions?

Mr. Rockwood: Yes.

By Mr. Rockwood:

Q. Mr. Devine, how many carloads of pine lumber do you use each year at your plant at Dubuque, Iowa?

A. Again I will have to answer that by saying that I can't give you that information. I can't divulge the amount of traffic we have.

Q. Of the total carloads that are received by you at Dubuque, Iowa, of pine lumber from the states of Washington and Oregon, what percentage of that is from points located solely on the lines of the S. P. and S. and served only by the S. P. and S.?

A. I am not prepared to answer as to the percentage.

Q. What percentage is received from the pine mills which are served by both the Union Pacific and the Oregon Trunk?

[fol. 910] A. I am not prepared to answer that.

Q. Do you receive any pine lumber from California?

A. Yes, sir.

Q. Ponderosa and sugar pine?

A. Yes, sir.

Q. From what source do you draw lumber in California?

Mr. Merrill: I object to that question. We haven't covered anything except points along the S. P. and S. and the Oregon Trunk, and counsel's cross-examination is going far afield.

Mr. Rockwood: If he gets ninety-nine per cent of his supply from California, sugar pine from California, that will certainly be a fair matter for consideration by the Commission when they consider this gentleman's testimony.

Exam. Dishman: You said that you weren't prepared to answer it?

A. I am not prepared to answer it, that is right.

By Mr. Rockwood:

Q. You say you are not prepared to answer it or will not answer it?

A. I will not answer it.

Q. What railroad or railroads serves the sources in California from which you receive sugar pine or Ponderosa pine?

A. In connection with the Pacific Northwest we receive lumber from points that are being discussed here, the Oregon Trunk, the S. P. and S., the Union Pacific in the Pacific Northwestern.

Q. And Great Northern?

A. And Great Northern.

[fol. 911] Q. Do you get pine from Klamath?

A. Yes, sir.

Q. Direct by Great Northern to Minnesota Transfer?

A. Yes, sir.

Q. My question was, what railroads serve the mills in California from which you obtain sugar pine and Ponderosa pine?

A. What railroads originate that?

Q. Yes.

A. I would say the Southern Pacific Railroad is one of the main initiating carriers, in addition to the Western Pacific.

Q. And that is, for the most part, north of San Francisco, in Northern California?

A. Well, it would be Southern California, too.

Q. From Southern California some?

A. Some.

Q. Does the Burlington have an agent in Dubuque?

A. Not a traffic man. They have just their local freight agent there.

Q. Does the Illinois Central have an agent in Dubuque?

A. Yes, sir.

Q. Does the Great Western have an agent in Dubuque?

A. Yes, sir.

Q. What is the difference between the nature of the work done by the Milwaukee agent or the Milwaukee representative at Dubuque and the representative of the [fol. 912] Great Western and the Burlington?

A. You mean, what is the nature of their work?

Q. What is the difference in the kind of service they give?

A. It would be very similar service in so far as what we discussed as to tracing cars and so forth.

Q. And, if a car were moving via the Northern Pacific, let us say, or the northern lines, into the Minnesota Trans-

fer, and you wanted to trace it, and if it were routed beyond the Transfer via the Burlington, the Burlington would assist you in tracing that car, would it not?

A. They would, yes.

Q. And if it were routed beyond Minnesota Transfer via the Milwaukee, the Milwaukee would assist you in tracing that car?

A. Yes, sir.

Q. Similar for the Great Western?

A. Yes, sir.

Q. If it were routed beyond the Transfer via the Great Western?

A. That is right.

Q. In that respect, the service is about the same of the three roads when it comes via the Transfer?

A. I would say the service is very comparable.

Q. Now you have had no experience, you say, with car shortages in the last two or three years; is that your testimony?

A. That is correct, sir.

Q. Who orders the car—who places orders for cars that [fol. 913] are loaded and shipped to you?

A. Our lumber suppliers.

Q. And the lumber suppliers for the most part route the cars, don't they?

A. They do, to an extent. However, we control that in that we must use that for transit. We must use this inbound freight, or those inbound freight bills for transit.

Q. Whether or not there is a car shortage doesn't come to your attention except as you are advised by the lumber dealers in the west from whom you make the purchases; is that right?

A. That is right, yes.

Q. Isn't it your experience that when there is a car shortage on one or two railroads in the northwest, the situation is general, and it may be that you will find it is being experienced by all of the railroads in the northwest in varying degrees?

A. That should be so.

Q. So that if there were a period when for any reason there should be a car shortage on the S. P. and S., wouldn't

you expect to find that condition generally applying on the Great Northern, Northern Pacific and Milwaukee and the Union Pacific?

A. Anyone interested in that route would no doubt assist us in supplying the cars.

Q. That doesn't answer the question.

A. In correcting that shortage.

Q. I say, a car shortage; if it existed at a given time on [fol. 914] the S. P. and S. lines would in all probability be found to extend to the Milwaukee at the same time; isn't that correct?

Mr. Maguire: If the witness knows.

Exam. Dishman: Do you know?

The Witness: I can't answer that. I don't know.

By Mr. Rockwood:

Q. You don't know much about the car supply out there in the Northwest, do you, Mr. Devine?

A. We haven't had to. As I said here, the car supply, in so far as I know or am concerned, has been adequate so I haven't been put to the test.

Q. The occasion hasn't arisen to examine and explore the subject?

A. I believe the testimony was brought out it could happen. It has happened in the past and can happen in the future.

Q. It could happen in the future, but that is the extent of your knowledge?

A. We do not know about the future.

Q. That is the extent of your knowledge?

A. Yes, sir.

Mr. Rockwood: May I have the last couple of answers read, Mr. Reporter?

(The record was read.)

By Mr. Rockwood:

Q. Do you wish to reconsider the position you took with respect to your sources of supply, Mr. Devine?

A. No, sir, I don't have that authority.

Mr. Rockwood: That is all.

[fol. 915] Exam. Dishman: Any other questions?

Mr. Torinus: I have a few questions.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Are you prepared to tell us what proportion of your cars received at Dubuque originated on the Southern Pacific?

A. No, sir.

Q. Union Pacific?

A. No, sir.

Q. What secrets would you disclose by simply giving the names of the railroads and the proportions of business originated on those lines?

A. Well, as I said previously, I am not at liberty to give our sources of supply, and I don't have the figures available to give an accurate report.

Mr. Torinus: Mr. Examiner, I submit we can't cross examine this witness unless he is willing to give us details upon which we are entitled to ask questions.

Exam. Dishman: Well, you stated that you didn't have the figures; isn't that right?

The Witness: Yes, sir.

Exam. Dishman: So that is in addition to any unwillingness on his part. If he doesn't have the data available, he can't give it.

By Mr. Torinus:

Q. Well, can you give us an approximation of what proportion of the cars that you received in 1953 at Dubuque [fol. 916] originated on the Southern Pacific?

A. No, sir.

Q. Would you be willing to supply that information for the record?

A. I can't answer that.

Mr. Maguire: May I interrupt?

Mr. Torinus: Yes.

Mr. Maguire: Are you authorized by your employer to give this information out?

The Witness: No, sir.

Mr. Maguire: That may answer some further questions.

By Mr. Torinus:

Q. Are you willing to— Well, I will put the question this way, first: Can you tell us what proportion of the total cars you received at Dubuque in 1953 originated at S. P. and S. system points?

A. That was asked previously, I believe, and I told you that I wasn't at liberty to answer that question.

Q. Are you at liberty to answer whether or not that is a greater or a smaller proportion than the cars originated on the Southern Pacific, for example?

A. I wouldn't say that. I would say this. It is attractive.

Q. I didn't ask you whether it was attractive or not. I want the proportions?

A. I can't answer that.

Mr. Merrill: I object to the last question. He asked him [fol. 917] whether it was greater or less; in what proportion it was greater or less.

Mr. Torinus: I move to strike this witness' entire testimony on direct examination. I don't know how anyone can be expected to cross-examine a witness who purports to state conclusions with respect to advantages and disadvantages and adequacies and inadequacies, if he is unwilling even to give us the slightest information as to the railroads, not the stations, not the consignors, but as to the railroads which participate in the transportation. I think his testimony is wholly worthless, and I move that it be stricken from the record.

Mr. Maguire: That is merely an echo,—

Mr. Torinus: It is more than an echo.

Mr. Maguire: (Continuing)—of Mr. Rockwood's motion, and I don't think it is even necessary to comment on it.

Exam. Dishman: We have been over that. I stated the witness' testimony may stand for what it might be worth, and when the Commission gives it weight, all that was stated will be considered. Any other questions?

Mr. Torinus: Just a minute, Mr. Examiner. I might have some more.

Exam. Dishman: All right.

Mr. Torinus: I have no further questions.

Mr. Golden: I have a few questions.

Exam. Dishman: Very well.

[fol. 918] By Mr. Golden:

Q. You indicated, I believe, that you dispose of some of your products east of Chicago and in the south and in the southwest?

A. Yes, sir.

Q. Do you know who the defendants are in this complaint in those areas?

A. Who are the defendants here?

Q. Yes.

A. I don't know. I couldn't enumerate them, no.

Q. You couldn't tell us then over which roads in those areas you might have use for joint rates if they were available in connection with—

A. State that again, please.

Q. You couldn't tell us, then, which of the roads in those areas you would use if they had rates available over the lines of the complainant?

A. You mean beyond the Milwaukee?

Q. East of Chicago.

A. East of Chicago?

Q. Yes.

A. Well, we would use— We ship to all points east of Chicago, and that would be predicated on the final destination of the shipment, I would say, as to what routes we would use. All routes are available to us east of Chicago.

Q. All routes are available to you east of Chicago?

[fol. 919] A. Yes, sir, under the present set-up.

Mr. Golden: That is all.

Exam. Dishman: Any other questions?

Mr. James: I want to join in the motion that has been made to strike all of the evidence of this witness. I want to say that in my opinion we are not being given a fair and full hearing, due process guaranteed us, and there

hasn't been a single authority or a single citation of even, of any statutory provisions warranting this witness from deciding, without referring the matter to the bench, that he will or will not answer questions and which are completely relevant to the facts that were elicited on the direct examination.

Exam. Dishman: Well, you add your remarks going to the motion that has been made, and which has been ruled upon, so your remarks will also be considered.

Mr. James: Thank you.

Exam. Dishman: Is there anything further of this witness?

Mr. Merrill: That is all.

Mr. Rockwood: I have nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Merrill: I will call Mr. Bissell.

R. L. Bissell was sworn and testified as follows:

Direct examination.

[fol. 920] By Mr. Merrill:

Q. Have you been sworn, Mr. Bissell?

A. Yes, sir.

Q. Will you state your name, address and occupation?

A. R. L. Bissell, traffic manager, Roach and Musser Company, manufacturers of sash and doors and building woodwork, Muscatine, Iowa.

Q. On what railroad are you located at Muscatine, Iowa?

A. The Milwaukee and the Rock Island.

Q. What materials do you use in the operation of your business, Mr. Bissell?

A. Western Ponderosa pine lumber and sugar pine.

Q. And will you state the source of supply of such materials?

A. Washington, Oregon, California, and a few points in Idaho.

Q. Do you obtain any of such materials from points along the S. P. and S. or the Oregon Trunk Railway?

A. Yes, we do.

Q. Could you name some of the points along the lines from which you receive these materials?

A. There is Madras, Oregon, Prineville, Oregon, Prineville Junction, and I don't recall—there may be others at this time, but I don't recall them; any more than that.

Q. Is Madras one of the important supply points or sources of supply?

A. I would say it is an important point in that area.

Q. All right, sir. What is the approximate volume of [fol. 921] the material which you obtain from all sources?

A. Do you mean from the S. P. and S. points?

Q. How many carloads of pine lumber do you use in the course of a year in your business?

A. Well, I can answer it in this way: It is several hundred cars; somewhere around five hundred.

Q. Do you know approximately how much or how many would originate on the S. P. and S. or the Oregon Trunk points?

A. Roughly speaking, it would be approximately twenty per cent.

Q. Twenty per cent of how many cars?

A. Of several hundred.

Q. Of several hundred?

A. That is right.

Q. The marketing area where these sash and doors may be sold is principally where?

A. All points east of Chicago.

Q. Including Chicago?

A. Including Chicago, and other points in Western Trunk Line territory, southeastern territory and Eastern Trunk Line territory.

Q. Now, did you hear the testimony of the witness who preceded you, Mr. Devine?

A. Yes.

Q. And, are the routes which he testified to as presently available to him also available to you at Muscatine, Iowa?

[fol. 922] A. Yes, they are.

Q. And would you state where Muscatine, Iowa, is, for the benefit of the record?

A. It is approximately twenty-five miles southwest of Davenport on the Mississippi.

Q. On the Mississippi River twenty-five miles southwest of Davenport?

A. That is right.

Q. Now, which of the routes which are presently available to you from S. P. and S. or Oregon Trunk origins do you use?

A. We use the S. P. and S. to Spokane, Great Northern-Northern Pacific, to Minnesota Transfer, and thence Milwaukee or Rock Island. Do you want the route from Marengo also?

Q. I will come to that.

A. All right.

Q. Do you presently use the route of the Milwaukee from Spokane to Minnesota Transfer or to Muscatine?

A. No.

Q. You do not use the Milwaukee Road out of Spokane; is that correct, at the present time?

A. No, sir, we do not.

Q. Do you use the route via Marengo; thence Milwaukee Road to Minnesota Transfer or to Muscatine?

A. It is available but we don't use it.

Q. And is the reason you do not use such routing the [fol. 923] same as that which Mr. Devine testified to?

A. That is right.

Q. Now, if the Spokane Gateway is opened as requested by the complainant in this case, and joint through rates are available from S. P. and S. and Oregon Trunk origins to Spokane; thence via the Milwaukee Road to Muscatine, and to all points on the Milwaukee Road and its connections, would you utilize such routes, giving the Milwaukee Road a share of the long haul traffic from Spokane, eastward?

A. Yes, we would.

Q. And, with respect to this route from Minnesota Transfer to Muscatine, Iowa, would there be any change in your present route in so far as you can say?

A. No, I don't think that there would be.

Mr. Merrill: I think that is all, sir.
Exam. Dishman: Mr. Rockwood?

Cross examination.

By Mr. Rockwood:

Q. Mr. Bissell,—?
A. Yes, sir.
Q. (Continuing)—do you have rates from the Pacific Northwest via the Union Pacific to Omaha, and thence to Muscatine, with transit privileges so you can ship east?
A. That is right, we do.
Q. Madras is located on the Oregon Trunk?
A. I believe that is right.
[fol. 924] Q. And Madras is also located on the Union Pacific, is it not?
A. I believe that is right. Yes, that is right.
Q. Actually, the Union Pacific and the Oregon Trunk use the same rails from Columbia River down to Bend, so that you now have two routes with full transit, either Northern lines through Minnesota Transfer, thence Rock Island, on down to Muscatine, with transit privileges to reach everywhere you want them, or you can reach Muscatine via the Union Pacific all the way to Omaha, and thence a line out of Omaha to Muscatine, with full transit privileges east?
A. Yes, sir.
Q. Is that right?
A. That is right.
Q. Where is Prineville? What railroad is Prineville located on, do you know?
A. I believe that is on the Oregon Trunk, as I recall.
Q. I think you will find it is on the City of Prineville Railroad, which connects with the Oregon Trunk at Junction, and the City of Prineville Railroad is not a party defendant in this case. Do you get a substantial part of your supply of pine lumber from Prineville?
A. From that area.
Q. Well, from the mills that ship over the City of Prineville Railroad?

A. Yes, we do.

[fol. 925] Q. That being true, then, since the City of Prineville Railroad is not a party defendant in this case, the Commission presumably couldn't establish joint through rates from Prineville to Muscatine in this case?

A. Isn't it also true there are no other available roads other than the S. P. and S?

Q. I am talking about the City of Prineville Railroad.

A. I believe that is true; it is the only available routing.

Q. Yes, the only connection. That is the only connection; the joint rate of the Union Pacific and the Oregon Trunk, that is true.

A. Yes.

Q. There is no other way of getting out of there.

A. That is true.

Q. They could get out either Oregon Trunk or Union Pacific at Prineville Junction?

A. I would like to state this, that we route the traffic from the S. P. and S. area through Minnesota Transfer due to the fact that we need certain tonnage, and for that reason that is why it is routed that way.

Q. Which is satisfactory?

A. That is right.

Mr. Rockwood: That is all.

Trial Examiner Dishman: Any other questions on cross-examination?

[fol. 926] Mr. Merrill: I neglected to ask a couple of questions on direct examination, and I wonder if I can ask them at this time, Mr. Examiner?

Exam. Dishman: Yes, sir.

Redirect examination.

By Mr. Merrill:

Q. Do you anticipate there would be any advantage with respect to tracing the cars which might be moving from Spokane via the Milwaukee Railroad, as compared to your present practice of tracing cars which might be moving from Spokane via the Great Northern or Northern Pacific?

A. I believe that when you are working with one railroad, one railroad alone, you would get possibly better service. There would be less time involved, less expense.

Q. And I asked you whether the reasons you did not use the routes via Marengo or the Milwaukee from Spokane were the same as given—were the same as those given by Mr. Devine?

A. Yes, you did ask me that.

Q. And you answered yes?

A. Yes.

Q. I wonder, however, whether or not you will state those reasons for the record specifically?

A. Well, on the long haul from Marengo, our outbound transit is restricted to points east of Chicago or cross lake route to points north of the Ohio River, and, therefore, it isn't practical to use that kind of tonnage handling business.

Q. And what about using the route of the Milwaukee [fol. 927] from Spokane eastward? Is there any restriction on the transit there at Muscatine if that route were to be used?

A. Yes, there are restrictions on the route, or on the routing to points on the Milwaukee and off-line points also.

Q. In other words, there are certain points on the Milwaukee and all of the off-line points which you would be unable to reach if you were to use that routing; is that correct?

A. That is right.

Mr. Merrill: That is all.

Recross examination.

By Mr. Rockwood:

Q. On this business of service. Twenty per cent of your supply, you say, comes from this area adjacent to the Oregon Trunk?

A. I would say so.

Q. Where does the rest of it come from?

A. Southern California points and also Northern California points and Oregon.

Q. And you use both Ponderosa and southern pine?

A. That is right.

Q. So that for eighty per cent of your business this advantage of a single line tracing your cars wouldn't apply because the Milwaukee doesn't reach Northern or Southern California; isn't that right?

A. No, I disagree with you.

Mr. Rockwood: That is all.

[fol. 928] Exam. Dishman: Anything further?

Mr. Torinus: I have a few questions.

Exam. Dishman: Very well.

By Mr. Torinus:

Q. This twenty per cent you are talking about, this twenty per cent of your business originates at Madras, Prineville and Prineville Junction?

A. Yes.

Q. Is that right?

A. That is right.

Q. How is that routed now?

A. City of Prineville Railroad, S. P. and S., the Great Northern or Northern Pacific to Minnesota Transfer and Milwaukee to Muscatine.

Q. You also have the S. P. S. and Union Pacific routes from those points?

A. That is right, but we don't use them too much.

Q. Over both routes you have unlimited transit privileges to the points shown?

A. Would you ask that again, please?

Q. On lumber originated then at those points, over either one of those routes, coming into Muscatine, Iowa, you have no restrictions with respect to movements to points beyond transited at Muscatine?

A. I believe there are a few restrictions in connection with the Union Pacific through Council Bluffs, Iowa, into [fol. 929] southeastern territory. Now, I am not positive about that, but I believe there are a few restrictions there.

Q. You do not know whether there are or not?

A. I am not positive, no. I will have to check that.

Q. Have you ever got caught short so that you became conscious of any such restrictions?

A. No, I would say not.

Mr. Torinus: I have nothing further.

Mr. Boe: I have a question.

Exam. Dishman: All right.

By Mr. Boe:

Q. Mr. Bissell, I represent the Rock Island, and a few other railroads. As I understood your direct testimony, at the present time you use the Rock Island service between the Twin Cities and Muscatine in connection with traffic that originates in the Pacific Northwest?

A. Yes, sir.

Q. And Milwaukee, the Milwaukee Road also serves the Twin Cities and Muscatine, as I understand it?

A. Yes, sir.

Q. You have not used that line, did I understand you correctly, between the Twin Cities and Muscatine?

A. We use both lines.

Q. You use both lines?

A. Yes, sir.

Q. And do you use both lines between Omaha and Muscatine?

[fol. 930] A. We use the Rock Island from Omaha to Muscatine, and the Milwaukee from Council Bluffs to Muscatine.

Q. Well, we are talking about the same area between either the Milwaukee or the Rock Island to Muscatine, from Omaha?

A. That is right.

Q. Your place of business is served by both the Rock Island and the Milwaukee Railroad, is it not?

A. That is right, yes, sir.

Q. Is it your intention to carry on your business in the same way in the future as in the past, or would you modify any shipping plans if the Milwaukee were successful in this case?

A. No, we have no intentions of changing our type, or the number of cars we ship out.

Mr. Merrill: Are you referring to the routing from the Transfer on to Muscatine?

Mr. Boe: I am talking about what the witness is talking about.

Mr. Merrill: He talked about both.

Mr. Boe: I mean from Spokane and from the Twin Cities.

Exam. Dishman: Yes.

Mr. Boe: On shipments moving to Muscatine; from the Twin Cities to Muscatine; is that right?

The Witness: That is what I have been telling you.

Mr. Boe: That is all.

By Mr. Golden:

Q. Do you buy from Mills at Prineville Junction and Madras?

[fol. 931] A. Yes.

Q. What are those mills?

A. Well, I can't say one from the other. I may get them mixed up, because I don't have anything to do with the purchasing of the lumber. I can't say which are which, because I may get them turned around. I believe one is the Warm Springs Lumber Company and the other is the Ochocho Lumber Company.

Q. How many cars did you buy from those two sources in 1953?

A. I can't truthfully answer that, because I haven't anything to do with the purchasing of the lumber.

Q. Are the cars consigned to the company?

A. That is all,— Yes, that is right.

Mr. Golden: That is all I have.

Mr. Merrill: Nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: I do not wish to unduly impose upon the notorious good nature of my friend, Mr. Rockwood, but I wonder if this would be agreeable. I have two additional witnesses which will just about finish up the afternoon here, who can not be here tomorrow, and Mr. Meyer will

be here tomorrow. I wonder if there would be any objection to Mr. Meyer's further cross-examination being deferred until tomorrow morning, or until these two witnesses finish?

Mr. Rockwood: I have no objection. I don't give any [fol. 932] assurance I will finish with the witnesses so that they can get out of town, but I will have no great objection to their being called.

Mr. Maguire: I know we are running a great risk, but we will have to take that risk. I would like to call Mr. Moberg.

E. F. Moberg was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. You have been sworn?
A. Yes, sir.
Q. Will you state your full name?
A. E. F. Moberg.
Q. Where do you live?
A. In Omaha, Nebraska.
Q. And what is your business, Mr. Moberg?
A. I am general manager of the Omaha Grain Exchange.
Q. And are you authorized by the Omaha Grain Exchange to present testimony in this proceeding?
A. I am.
Q. You do not have a formal statement prepared, a written statement?
A. I don't have a prepared statement.
Q. Are you familiar, in a general way, with the issues involved in this proceeding?
A. I am.
Q. And will you please state, in your own way, the [fol. 933] position of your organization with respect to the issues?
A. The Omaha Grain Exchange is a membership corporation, incorporated in the State of Nebraska, and comprises thirty-nine resident grain firms that do a general grain business in the terminal market of Omaha.

Of these thirty-nine firms, nineteen of them operate terminal elevators with an aggregate capacity of approximately twenty-nine million bushels.

Now, our firms are constantly competing with other markets, and areas for the disposition of grains and have found that the area of the Pacific Northwest is a consuming area of corn, especially corn, and we are restricted by the use of Milwaukee tonnage coming into our market. By that, I mean the grain or corn originated on the Milwaukee Railroad coming into the Omaha market for storage, and subsequent movement. When it is shipped out, as an example, to Spokane, you have there inspection and disposition and it is restricted tonnage because it can not go to the S. P. and S. and its connections such as the Oregon Trunk line, when the grain is inspected at Spokane, and our people are of the opinion that with a more fluid routing and a more flexible routing, it will enable us to compete better with the other markets such as Sioux City and Minneapolis, Minnesota.

Q. Do you have a demand for Milwaukee inbound tonnage into Spokane and transit out of Spokane?

A. There is a demand— Let me put it a different way, [fol. 934] if I may. There isn't any demand for any specific tonnage. The tonnage used depends on the more widespread destination territory to which it can get, and there are tremendous amounts of Milwaukee tonnage available for that movement.

Q. I see. And, then, what is the effect, if any, upon the price of this grain and corn which is originated at Milwaukee points and moves into Spokane of the restriction as to the routing over the S. P. and S. and its subsidiaries, the Oregon Electric and the Oregon Trunk?

Mr. Torinus: I object. There has been no foundation laid for such a question. He hasn't testified as to prices in Spokane. He is the traffic manager in Omaha.

Mr. Maguire: He is not. He is the general manager. He has already commented upon that very subject, and I am developing it. He said it was penalty tonnage.

Mr. Torinus: You asked about prices. He hasn't testified to anything about prices.

Mr. Maguire: I will withdraw the question.

By Mr. Maguire:

Q. What do you mean by penalty tonnage which you mentioned a few minutes ago?

A. Penalty tonnage is tonnage that can not have the widespread disposition after it reaches an inspection point. All grain going to the Pacific, or the preponderance of the grain going to the Pacific Northwest is subject to inspection and grading at one of the inspection points such as [fol. 935] Spokane. After the grading is determined at these inspection points, the disposition is then made.

Q. Yes.

A. A certain grade being called for on the S. P. and S. Railroad that this particular car in Spokane meets, but it can not go to the S. P. and S. That is what is meant by restricted tonnage.

Q. And are you in touch, in your capacity as general manager of the Omaha Grain Exchange,—are you generally familiar with the impact of any such restrictions upon the prices of grain at any inspection or diversion points?

A. From our numerous discussions with our thirty-nine grain firms and from what I have determined from investigation, that is what I learned, yes.

Q. And, what effect does restricted routing of this kind have upon the price which this corn or grain will bring in Spokane; this restricted tonnage?

Mr. Torinus: Just a minute. I object to the question. There has been no foundation laid, and as calling for a conclusion; calling for hearsay testimony.

By Mr. Maguire:

Q. Were those inquiries and those conferences in the daily course of your business? Or are they at the present time?

A. They are, yes.

Mr. Maguire: I think that makes it clearly admissible, Mr. Examiner.

[fol. 936] Exam. Dishman: The witness may answer.

The Witness: The restricted tonnage, when it arrives, like the example that I gave, is subject to discount if it

can't get to the territory by the Pacific Coast buyer to which he wants it destined.

By Mr. Maguire:

Q. And will you state whether or not it would be to the benefit of your organization if joint through rates via the Milwaukee to Spokane and thence S. P. and S. and the necessary through routes, if any,—what effect that would have upon the benefits or the interests of your organization?

A. One of the purposes, among others, of the Omaha Grain Exchange, is to promote the grain business for its member firms, and this will enable a more fluid routing to get into deeper territory.

Q. Would you regard that as a benefit to your organization?

A. I definitely would, yes, sir.

Mr. Maguire: You may cross-examine.

Cross examination.

By Mr. Torinus:

Q. This corn you are talking about is corn that comes into Omaha via the Milwaukee Railroad and moves beyond Omaha to the Pacific Coast?

A. Yes.

Q. Is that right?

A. That is correct.

Q. In other words, your testimony, so that I may understand it, clearly relates to corn originating on the Milwau- [fol. 937] kee and moving into Omaha via the Milwaukee?

A. That is right.

Q. Now, with respect to that corn, you have, do you not, now out of Omaha to all points on the S. P. and S. and its subsidiaries, an available route via the Milwaukee to Terry, Montana, thence Northern Pacific to Spokane, and thence S. P. and S. to destination?

A. That is correct. That route is available, but that tonnage then still becomes restricted tonnage to Milwaukee destinations when it gets to Spokane.

Q. It is restricted to the same extent as any other tonnage brought in by the Northern Pacific, isn't that correct, as far as reaching Milwaukee destinations are concerned?

A. Still sticking with Milwaukee origins, yes; yes, definitely.

Q. Let me go back for a minute. I do not know whether we are talking about the same thing. First, as I understand it, you have the opportunity of reaching all S. P. and S. system points with corn that comes into Omaha via the Milwaukee if you route your corn out of Omaha via the Milwaukee and Northern Pacific to Spokane; is that correct?

A. That is correct.

Q. If the corn is so routed, would you call that penalty corn?

A. Oh, yes, for the reason that when it got to Spokane for inspection and disposition, that same car of corn could not go to a Milwaukee destination because the Milwaukee [fol. 938] ties grain originating on their own line to their long haul to their own destinations.

Q. It is restricted only to the extent that it can not move out of Spokane via the Milwaukee, isn't that correct, to a Milwaukee destination?

A. I don't understand your question, that particular question.

Q. Well, you have said that this corn that comes out of Omaha and it is routed via Milwaukee to Terry, Montana, thence Northern Pacific to Spokane, can reach all S. P. and S. destinations, but that you would still call it penalty corn because it can't be consigned out of Spokane to a Milwaukee destination?

A. That is right, it can't be reconsigned to a Milwaukee destination.

Q. Isn't that true also, sir, of corn, which is brought into Spokane and arrives there on the Great Northern or on the Northern Pacific?

A. Yes. You can use the route of these—still sticking with the Milwaukee origin tonnage, you can use the Burlington Railroad to Laurel, and thence the Great Northern to Spokane to get to S. P. and S. destinations. However, when it gets to Spokane for grading and disposition, should it not meet the Spokane requirements and maybe a require-

ment—that is, the S. P. and S. destination requirement, there may be a requirement on the Milwaukee Railroad to which it can not go so it is still restricted tonnage.

Q. Then, if I understand what you are saying, is that no [fol. 939] matter how the corn gets to Spokane, whether it comes in on the Milwaukee all the way from Omaha, or whether it is routed via the Milwaukee to Terry; thence Northern Pacific, or whether it is routed Burlington out of Omaha to Laurel, thence Great Northern or Northern Pacific, when it gets into Spokane, there is always some restriction on it, depending on the road upon which it arrives when it gets to Spokane?

A. The restriction wouldn't be as great if it went out to Spokane via the Milwaukee, and thence had the opportunity to be reconsigned or diverted or disposed of to either a point on the Milwaukee or on the S. P. and S. and its connections, whereas if it—

Q. Just a minute, now. You don't have any corn that has that privilege now, do you, that comes in on the Great Northern or the Northern Pacific. It hasn't that privilege?

A. That is correct. That is what I understand this complaint is about.

Q. So, what you want is some privilege with respect to Milwaukee corn that will not remove the penalty, but will put the Milwaukee corn in a more favorable position than corn arriving in Spokane on the Great Northern or the Northern Pacific; is that right?

A. It will be in a more favorable position than corn arriving on the Great Northern or the Northern Pacific in regard to competitive routes, but it would be on an equal competitive basis with the market such as Sioux City and Minneapolis from which the Great Northern [fol. 940] publishes scalper tariffs to meet a situation of that kind.

Exam. Dishman: What kind of tariffs?

The Witness: Scalper tariffs. If I may, Mr. Examiner, explain that?

Exam. Dishman: Yes.

The Witness: The Omaha market, like other markets, Sioux City and Minneapolis, operates on a transit basis in

connection with so-called standard rate tariffs. The Great Northern Railroad, as an example, publishes from the Sioux City and Minneapolis market what is termed in grain parlance scalper tariffs, or tariff, that reflect in one spot the rates out of the market and this so-called scalper tariff is in addition to what is already in the standard tariffs. That is, the routes in those tariffs are in addition to what is in the standard tariff.

By Mr. Torinus:

Q. You also have a scalper tariff out of Sioux City published by the Milwaukee, do you not?

A. Published by the Chicago and North Western, the Milwaukee Railroad and the Great Northern Railway.

Q. And also by the Milwaukee and some of the other lines out of the Twin Cities?

A. That is right; the Great Northern and Northern Pacific and the Soo Line.

Q. You didn't wish to imply then that the Great Northern Railroad was the only one that publishes a scalper tariff?

[fol. 942] A. Oh, no.

Q. That is quite generally the case out of some of the markets; is that right?

A. It is quite generally in Sioux City and Minneapolis, yes, in those markets.

Q. Don't they publish scalper tariffs out of Omaha?

A. They have one scalper tariff out of Omaha. It is limited to origins. Let me put it this way: it only covers Nebraska origins.

Q. Now, getting back to the issue in this case. As I understood the testimony, you raised it on direct, that corn coming into Spokane which was routed out of Omaha would be subject to a penalty. If I understand the rate situation correctly, you now have two routes from Omaha on corn in connection with the Milwaukee; one, Milwaukee all the way to Spokane, with respect to which you can reconsign corn beyond Spokane to Milwaukee destinations, also destinations on the Union Pacific or Southern Pacific, which happen to be common points with S. P. and S. system points, and you also have a route via Milwaukee to Terry, Montana,

thence Northern Pacific, by which you can reach all S. P. and S. points beyond local and common points. So, isn't it a fact, sir, that under the routing which you have with respect to Milwaukee corn there isn't a destination in the Pacific Northwest on the Milwaukee, or on the S. P. and S. system lines that you can't now reach?

A. Via the going rates and tariff routes, I don't think [fol. 943] there is a point that you can't reach with grain going to any transcontinental destination, if you want to route it from the origin territory. The grain isn't handled that way. Grain is consigned to an inspection and disposition point for reconsignment.

Q. That is what I am talking about, grain consigned to Spokane. You can consign it either way, and with a combination of these several routes, you can reach any destination on the Pacific, North Pacific Coast served by any of these lines?

A. No, you can't if you only route one car. If you are routing numerous cars into that territory, and will divide it, or are dividing it among the different lines, what you say might be a possibility, but sticking with one car of corn coming off the Milwaukee Railroad, the route you mentioned, the Terry route along with the Milwaukee system to Spokane, either route you select is a restricted route when you get there.

Q. The Terry route isn't any more restricted than the Great Northern and Northern Pacific routes in connection with the Burlington route now into Spokane, is it?

A. Not in the same manner it is not restricted, but it is a restricted route.

Q. But in so far as reaching Milwaukee destinations, it isn't any more restricted than the Great Northern or Northern Pacific routes?

A. That is what I am talking about.

Q. Well, just so this situation might be brought out in a [fol. 944] little more detail, corn that comes into Spokane on the Great Northern can't be consigned beyond Spokane by the Northern Pacific to Northern Pacific destinations, and the corn that comes into Spokane via the Northern Pacific can't be consigned to Great Northern or Milwaukee destinations; is that right?

Mr. Maguire: I think that is about the fourth time that has been asked. Counsel has belabored it and belabored it without any change in the wording even.

Exam. Dishman: Let the witness answer this question.

The Witness: Will you restate the question, please?

By Mr. Torinus:

Q. Maybe I can shorten it up in this way: All corn that comes into Spokane on any particular railroad has some restrictions and is subject to some penalty under your conception of penalty; isn't that right?

A. In our business, I would say that there are some restrictions. This is one that if the Milwaukee prevails here will be removed and from there on down.

Mr. Torinus: I have no further questions.

Exam. Dishman: Any other questions on cross-examination?

(No response.)

Exam. Dishman: Any redirect examination?

Mr. Maguire: I have a few questions.

Redirect examination.

By Mr. Maguire:

Q. Now, to belabor further the question that Mr. Torinus has asked you: Now, when a carload of corn gets into [fol. 945] Spokane, comes in, the Northern Pacific having had the long haul on it, of course, after inspection can be transshipped to any Northern Pacific point; I think that is thoroughly established?

A. That is right.

Q. Does that car of corn have any other outlet besides purely Northern Pacific points, and what connections the Northern Pacific might have?

A. That is right.

Q. Yes.

A. What short line connections it might have.

Q. How about S. P. and S. destinations on the S. P. and

S., can that corn move Northern Pacific, and can that corn move over the S. P. and S. under their joint rates that they have?

A. Via the Terry, Montana route?

Q. Any Northern Pacific route that comes in.

A. I am not sure. I am not in a position to answer that right now. I have made a check of it, but it is vague in my mind.

Q. And do you know whether or not cars coming in on the Great Northern, which the Great Northern may haul into Spokane, let us say, from the Minnesota Transfer, those, of course, can be transshipped beyond the Great Northern?

A. That is right.

Q. And also do you know whether or not there is a route open to them via the S. P. and S.?

[fol. 946] A. Yes, there is. I know that one.

Q. You are not so sure about the Northern Pacific?

A. I haven't checked their so-called scalper tariff, but I have checked the Great Northern.

Q. Now, then, if a car comes into Spokane via the Milwaukee, where can it go so far as the S. P. and S. is concerned? Well, where can it go other than to Milwaukee destinations?

A. Well, to all other connections to which there were traffic routes, but it will not go to the S. P. and S. or its connections.

Q. Yes. And, are you familiar with the difference in the so-called drawback, which is a refund of your inbound rate from the country station to the first transit station so far as the Milwaukee or Union Pacific are concerned?

A. You call it a drawback. We call it absorption. I imagine we are talking about the same thing.

Q. I think so.

A. I am acquainted with them, yes.

Q. Do you know what the maximum absorption is so far as the Milwaukee, the Great Northern or the Union Pacific are concerned to Portland, for example?

A. 25.5 cents on South Dakota tonnage.

Q. On South Dakota tonnage?

A. Yes, sir.

Mr. Maguire: I think we will have another witness on that point. I don't think he gave the right answer on that.

[fol. 947] By Mr. Maguire:

Q. Now, then, does the Great Northern corn so far as the S. P. and S.—when I say Great Northern corn, I mean corn moving via the Great Northern into Spokane, so far as the S. P. and S. is concerned, does it have an advantage over Milwaukee corn?

Mr. Torinus: Mr. Examiner, I object to the question. It calls for a legal conclusion.

Mr. Maguire: No.

Exam. Dishman: What kind of advantage? Will you explain that.

Mr. Maguire: I mean, does it have wider, a wider distribution area than Milwaukee corn after coming into Spokane, so far as the S. P. and S. is concerned?

The Witness: Yes.

Mr. Torinus: Coming in via what route?

Mr. Maguire: Via any route you want.

The Witness: Yes.

Mr. Torinus: I think you should reframe the question.

Mr. Maguire: I have stated the question.

Mr. Torinus: I move it be stricken. I move that the answer be stricken.

Exam. Dishman: The answer will be allowed to stand. You can cover it on your cross-examination.

Mr. Maguire: That is all.

Exam. Dishman: Any further questions of this witness?

(No response.)

[fol. 948] Exam. Dishman: You are excused.

(Witness excused.)

Exam. Dishman: Call your next witness.

Mr. Maguire: Mr. Bowman.

A. F. BOWMAN was sworn and testified as follows:

Direct examination.

By Mr. Maguire:

Q. Will you state your full name, please?

A. A. F. Bowman.

Q. And what is your residence and occupation, Mr. Bowman?

A. Racine, Wisconsin; traffic manager, the J. I. Case Company.

Q. And how many years of experience as a traffic manager, or experience in traffic work have you had?

A. Forty.

Q. Forty years?

A. Plus.

Q. Forty plus?

A. Yes, sir.

Q. And in what business is the J. I. Case Company engaged?

A. Manufacture and sale of agricultural implements, and that includes tractors.

Q. And I will ask you to discard your modesty for a moment and state whether the J. I. Case Company is a large and a prominent manufacturer of such articles?

A. One hundred and twelve years in business, and they [fol. 949] are one of the largest farm implement companies.

Q. And can you tell us where your plants are located and also by which railroads they are served?

A. At Racine, Wisconsin, we have two plants, one, the old plant and main plant, is served by the Milwaukee Railroad and the Northwestern Railroad. The tractor works is served only by the Northwestern Railroad. At Rockford, Illinois, we are served by the Milwaukee, North Western, Rock Island and Burlington.

At Rock Island, Illinois, we are served by the Rock Island Railroad; then at Bettendorf, Iowa, we are served by the Burlington Railroad, and the D. R. I. and N. W., which is a jointly owned line.

At Burlington, Iowa, we are served by the Burlington Railroad.

At Anniston, Alabama, we are served by the L. & N. Railway, and at Stockton, California, by the Central California Traction Company.

Q. Now, let us speak primarily about your plants in Wisconsin, Illinois and Iowa.

A. All right.

Q. Can you tell us generally what is manufactured at your Racine plants?

A. At our main works at Racine, we manufacture harvesters, thresher combines, hay balers, stock shredders, field cutters, rotary hoes, manure spreaders, fertilizer distributors, loaders and blowers, and at our tractor works we manufacture a line of tractors of four different sizes, [fol. 950] the heavier tractors that we produce.

At Rockford, Illinois, we manufacture mounted pull type implements, cultivators, plows, grain drills, harrows, planters, listers, manure spreaders, mowers and rakes.

At Rock Island, we manufacture a small sized tractor that we produce and sell with a set of plows that go with these. Mounted implements, what we call hammer feed mills, farm trucks and skid engines.

At Bettendorf, Iowa, self-propelled and pull type combines; field forage harvesters, hay balers, corn pickers, windrowers and at Burlington, Iowa, principally small combines and some farm elevators.

Q. When you talk about farm elevators, would you just describe briefly what you mean by that?

A. Well, a farm elevator is an agricultural implement that is used to elevate corn or baled hay, for instance, from the ground to the barn or cut silage or cut grass or forage into silos.

Q. Does that have a kind of a conveyor belt on that that moves up into the barn?

A. Yes, sir.

Q. That is what you mean by farm elevators?

A. Yes, sir.

Q. And do you ship in any volume to the Pacific Northwest?

A. Yes, quite heavily.

[fol. 951] Q. Can you state about how many cars per year you ship to Oregon and Washington, we will say?

A. Oh, over the average year we will ship two hundred to two hundred and fifty cars.

Q. And can you give us any general estimate as to the average value per car?

A. From fifteen to twenty-five thousand dollars, depending on the type of goods.

Q. Do you do any business with, or sell any of this farming equipment and your agricultural implements to people served by the S. P. and S. Railway, or by its subsidiaries, the Oregon Electric or the Oregon Trunk Railway?

A. We have dealers located in that territory that we deal with, and who sell our implements.

Q. Now, do you at present and do you expect to continue to utilize any privileges of stopping for partial unloading or storage in transit in connection with shipping your manufactured products?

A. That is a general practice that is followed considerably and constantly and consistently.

Q. And do you know how many stops you have available for these purposes?

A. Three.

Q. And to what extent do you avail yourselves of these privileges?

A. That happens very often in the movement of carload shipments of agricultural implements. These shipments [fol. 952] will move from point of origin to a destination and perhaps during the course of the movement of that car, and the controlling branch house, either at Spokane or Portland, know of the movement of that car, and they may have some good reason for wanting to divert that car; thereby they will issue a diversion order to the railroad at their point, designating the points at which they wish that car diverted, and that is a practice that happens very, very often.

Q. Now, with regard to stops for partial unloading, to what extent do you avail yourselves of that?

A. Very often. Many of the cars that are ordered for shipment to them go to more than one destination, and it is important and it is necessary in the distribution of goods to follow that practice.

Q. Yes. Now, would the establishment of joint through

rates whereby the Milwaukee Road would handle your shipments between Minnesota Transfer and Spokane, be of benefit to you in connection with sales made to parties on the S. P. and S. System?

A. Yes, sir.

Q. And in what respect would such rates be of benefit to you?

A. Presently, cars in transit moving,—moving via the Milwaukee Railroad, which were desired to be diverted there, a stop-over for a destination on the S. P. and S. Railroad could not be accomplished because of the absence of such routing.

Q. Now, maybe I don't understand just what you mean?

A. I am talking about diverting.

[fol. 953] Q. Yes. Do you mean stopping for partial unloading?

A. Either stopping for partial unloading or change in destination.

Q. Yes.

A. That is right.

Q. And with the present lack of through rates, is it possible for you to start a carload shipment, with its final destination on the S. P. and S. and providing for a stop in transit at a local point on the Milwaukee, say, at St. Maries, Idaho, for example?

Mr. Golden: I object. There has been no showing there is a lack of through rates so far as this witness is concerned.

Mr. Maguire: The record is replete with evidence of that sort.

Exam. Dishman: Does the witness understand that to be the case?

The Witness: Yes, sir.

Exam. Dishman: All right. Proceed.

By Mr. Maguire:

Q. For partial unloading or partial delivery?

A. Yes, imposed under the present unloading arrangements.

Q. Have you had any difficulty by reason of the lack of such rates?

A. Only recently we had a carload moving via the Milwaukee Railroad destined to Portland, Oregon, wherein our branch at Portland, Oregon, decided to effect the diversion for a point of delivery on the S. P. and S. and that could not be accomplished.

Mr. Rockwood: Can you name the point right now so that we can follow you?

[fol. 954] The Witness: Clatskanie.

Mr. Rockwood: Clatskanie?

The Witness: Yes, sir.

By Mr. Maguire:

Q. And what happened to the shipment as far as the charges were concerned?

A. The stop was effected. However the shipment was obliged to move beyond on local rates.

Q. Beyond Portland?

A. Yes.

Q. All right.

A. At a considerable excess cost in transportation.

Q. Where had that shipment been stopped for partial unloading?

A. At St. Maries, Idaho.

Q. Now, you have mentioned your warehouse. I think you said it was at Spokane and Portland. Do you keep a stock of goods at those warehouses in anticipation of future orders?

A. Yes, sir.

Q. And would the establishment of joint through rates, such as proposed here, be of any benefit to you so far as the full utilization of your Spokane warehouse is concerned?

A. Very much so.

Q. In what respect?

A. Operating under storage in transit at Spokane, we would be in position to move outbound from Spokane inbound cars moving into Spokane via the Milwaukee Railroad [fol. 955] as well as via the Union Pacific, Northern Pacific or Great Northern Railroads, which we can not do under the present arrangements.

Q. Now, do you also utilize the, or do you have available to you any privilege of stopping to complete loading?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. And I am going to ask you whether you have any such stopping privilege between any of your factories and, if so, would you briefly describe them?

A. At our factory at Rock Island, Illinois, we have a tariff provision allowing for stop-offs at Rock Island of carload shipments originating at Racine, Wisconsin, and moving via Minnesota Transfer to points in North Dakota, South Dakota and points beyond and that is an advantageous arrangement. It would permit us to start loading at Racine and complete loading at Rock Island, and consign it to the western territory.

Q. Does that privilege extend to Rockford, as well?

A. Rockford as well as Rock Island, yes.

Q. But, in connection with this route down through—from Racine down through Rock Island or Rockford, can you reach points on the S. P. and S. by through rates?

A. No, sir, because that traffic is practically obliged to move via the Milwaukee Railroad.

Q. I see.

[fol. 956] Mr. Maguire: You may cross-examine.

Mr. Rockwood: This is a rate adjustment, Mr. Examiner, that none of us lawyers are immediately familiar with, and we can not adequately cross-examine this gentleman this afternoon. We want an opportunity to discuss this situation with our own traffic people, and I don't like to make it inconvenient for anybody, but I think that we should, in the light of the time of day, have an opportunity to cross-examine him tomorrow morning.

Mr. Maguire: What rate adjustment are you talking about?

Mr. Rockwood: Well, I do not know; probably the same one the witness is talking about.

Mr. Maguire: Which phase of the rate adjustment are you talking about?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. The witness is excused temporarily.

(Witness excused.)

APPEARANCE

Mr. Steadry: I would like the privilege of entering the appearance of Mr. Jordan J. Hillman, also for the Northwestern Railway Company, and the Chicago, St. Paul, Minneapolis and Omaha. He is here, and he is a lawyer on the staff of the C. & N. W. law department, and is admitted to practice before the Interstate Commerce Commission.

Exam. Dishman: Very well. We will recess to 9:30 tomorrow.

(Whereupon, at 5:00 o'clock p. m., Tuesday, November 9, 1954, a recess was taken to 9:30 o'clock a. m., Wednesday, November 10, 1954.)

[fol. 959]

Transcript of Proceedings—November 10, 1954

Exam. Dishman: The hearing will come to order, gentlemen. Let the record show Mr. Bowman has resumed the stand for cross-examination.

Mr. Maguire: Could I have the indulgence of the Examiner? It has been called to my attention that there might be some possible confusion as to one answer Mr. Bowman gave yesterday. I would like to clarify it.

Exam. Dishman: All right.

A. F. Bowman resumed his testimony as follows:

Direct examination (continued).

By Mr. Maguire:

Q. Mr. Bowman, with reference to your plant at Rockford, it may be that this is a repetition of your previous testimony, but will you state the railroads that serve that plant?

A. The Milwaukee Railroad; the Northwestern Railroad; the C.B. & Q. Railroad, and the Illinois Central Railroad.

Mr. Maguire: You may cross examine.

Cross examination.

By Mr. Rockwood:

Q. I did not recognize, Mr. Bowman, of all names that you gave yesterday as locations of plants, and as to some of them I could not recognize immediately the location of those plants relatively. Is it a fact that except for your plant in Louisiana and your plant at Stockton, California, [fol. 960] all of your plants are located in Wisconsin, Illinois, in, we will say, the eastern half of Iowa?

A. That is correct.

Q. And from all of those plants on shipments of agricultural implements westward to the Pacific Northwest, you can route from the plant via the road serving the plant to Minnesota Transfer, thence go Great Northern or Northern Pacific to Spokane, and thence S. P. & S. to all points on the S. P. & S., Oregon Electric, and Oregon Trunk, on joint through rates?

A. Yes, sir.

Q. You can also move to all destinations on the Great Northern and the Northern Pacific in Oregon and Washington; well, we will say in Montana, Idaho, Oregon and Washington, using one of the northern lines, Great Northern or Northern Pacific?

A. Yes.

Q. I am sorry—from all of those plants, and in all my discussion I am excepting the Louisiana plant and the Stockton plant,—from all of those plants you likewise can go to the Pacific Northwest by routing from the plant by the railroads serving the plant to Omaha, and thence Union Pacific and Southern Pacific, to reach all points on the Union Pacific and Southern Pacific in the states of Idaho, Oregon and Washington, can you not?

A. Yes, sir.

Q. You also have a route from all those plants that are [fol. 961] served by the Milwaukee, to move by the Milwaukee to Marengo, Washington and thence Union Pacific to reach all points on the Union Pacific and Southern Pacific in Oregon and Washington west of Marengo, can you not?

A. Yes, sir.

Q. And on all of those available routes that I have described you are permitted under the tariffs to stop three times for partial unloading?

A. That is correct.

Q. Will you please tell us at what stations on the S. P. & S., Oregon Trunk and Oregon Electric your dealers are located?

A. That I cannot give you. However, I checked up after going back home last night as to the number of dealers we have along the S. P. & S., and Oregon Trunk; we have 26 dealers.

Q. S. P. & S., Oregon Trunk and Oregon Electric?

A. Yes.

Q. Is one of those 26 dealers at Salem, Oregon, for example?

A. Salem, Oregon, I don't think is on one of those railroads.

Q. It is on the Oregon Electric. The Oregon Electric, as you will recall, runs from Portland south through the Willamette Valley, through Salem, Albany to Eugene.

A. Well, I couldn't answer that question. I might presume so but I couldn't definitely answer.

Q. You know, do you not, that Salem is one of the larger communities in the state of Oregon?

[fol. 962] A. Yes, sir; I know that.

Q. Do you know Salem is served by the Southern Pacific?

A. Yes, sir.

Q. So that shipments to Salem could move either via the northern lines and S. P. & S., Oregon Electric, or via Omaha, the Union Pacific and the Southern Pacific?

A. Yes.

Q. Or via the Milwaukee to Marengo, hence Union Pacific and Southern Pacific to Salem?

A. Yes.

Q. You do not know how many of those 26 dealers which you say are located on the lines of the S. P. & S. and its subsidiaries, the Oregon Trunk and the Oregon Electric are located at points which are also served by either the Union Pacific or Southern Pacific; you don't know, do you?

A. I asked specifically for the number of dealers located along the line of the S. P. & S. Railroad.

Q. Yes.

A. And the answer was 26.

Q. Then I take it that you cannot tell us how many of the 26 are reached also by the Southern Pacific or Union Pacific.

A. I wouldn't presume there would be any of them outside of a terminal point like Portland, Oregon, where we are located with a branch house; it is between Spokane and Portland.

Q. Are any of those dealers of yours located on the [fol. 963] S. P. & S. between Portland and Spokane?

A. 26.

Q. Only?

A. Yes; that is the answer.

Q. You checked on the S. P. & S. and on the Oregon Trunk?

A. I checked on the S. P. & S.

Q. Does that include the Oregon Trunk?

A. No, I didn't ask about the Oregon Trunk.

Q. And you have 26 dealers located between Portland, Oregon and Spokane, Washington?

A. Yes, sir.

Mr. Rockwood: I would like to have furnished for the record the names of those 26 dealers of the firm, and the stations at which they are located. It is quite important. The witness has not shown the familiarity with the S. P. & S. system I anticipated he might have; that is, as to Salem on the Oregon Electric, so I would like to have that statement just to check to be sure that they are S. P. & S. points and not the points on the Oregon Electric and Oregon Trunk.

Redirect examination.

By Mr. Maguire:

Q. Can you readily obtain that information, Mr. Bowman?

A. Yes, sir.

Q. Do you have any objections from the point of view of your business, to furnishing it so far as any confidential [fol. 964] matter is concerned, or anything of that sort?

A. I wouldn't think so.

Mr. Maguire: We have no objection to the witness furnishing that. It could probably be a later filed exhibit. Is that the way you desire it to be put in, Mr. Rockwood?

Mr. Rockwood: I hope that will be sufficient; but I would like to see the materiality before I commit myself positively we will not want additional information.

Mr. Maguire: If you want additional information I think now is the time to ask for it if there is anything which occurs to you which might be missing from it. For example, I don't think it is necessary, Mr. Examiner, on points, such as whether Salem, Oregon, is also served by the Southern Pacific; I don't think it is necessary so far as the presentation of this case is concerned for that to be elicited from this witness because counsel certainly has witnesses, any number of them, and, as a matter of fact, most if not all of those points could be settled by stipulation.

Mr. Rockwood: I think you are probably—

Mr. Maguire: Would you like to have me finish?

Mr. Rockwood: I would be delighted to have you finish.

Mr. Maguire: But if it is simply a question of asking

collateral questions at a later date and at a later hearing of this witness, which could be elicited from other sources, I think that is an entirely different story.

[fol. 965] Exam. Dishman: You said something about stipulation.

Mr. Maguire: I would stipulate if he would ask me right now if Salem, Oregon is also served by the Southern Pacific; I wouldn't hesitate a bit about stipulating.

Exam. Dishman: On these other points would you enter into a stipulation on those points?

Mr. Maguire: If he will tell me what the points are. I might have to confer with somebody who knows about it.

Mr. Rockwood: Washtucna, Washington, is a point on the S. P. & S. also served by the Union Pacific.

Mr. Maguire: I don't think it is necessary to delineate all of those points at this time but so far as the physical location of any of the points which may be named in this exhibit, I think we can peaceably settle that between us for a fact without bringing the witness back, if there is any question about it.

Mr. Rockwood: I think that is possibly true.

Exam. Dishman: You propose to make a late-filed exhibit?

Mr. Maguire: Yes, and I would like to have the exhibit also include dealers on the Oregon Trunk and Oregon Electric; that is, on the entire S. P. & S. system. Do you have any objection to those being expanded to that extent?

Mr. Rockwood: Not at all.

Exam. Dishman: When would that be submitted?

Mr. Maguire: How long would that take?

[fol. 966] The Witness: Several days. I can mail it to you after the end of this week.

Mr. Maguire: After that, copies would have to be made of it and distributed. We would have to run mimeographed copies of the list and might I suggest that that will be served upon parties entering appearances in this case? I wonder if we could have until, say, within 12 days after the conclusion of the hearing.

Exam. Dishman: All right.

Mr. Maguire: And might I have just a moment here?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Recross examination.

By Mr. Rockwood:

Q. Mr. Bowman, how much work would it take to supply in addition to the information which has been described, a statement of the carloads that move to these destinations on the S. P. & S. system or were partially unloaded at these dealerships on the S. P. & S. system, say, for the first six months of 1954?

Mr. Maguire: Just a moment.

Mr. Rockwood: I am asking how much work it is.

Mr. Maguire: I know but I know what it is leading up to. I am going to object that it is merely laying preliminary ground to asking the witness to supply that information. [fol. 967] This is asking the witness to compile his business records so far as a substantial distribution territory goes for a period of six months and I think that goes beyond reasonable cross examination. I object to that question being made; I know what it is leading to.

Exam. Dishman: Were you leading up to that question?

Mr. Rockwood: Obviously.

Exam. Dishman: The witness will not be directed to supply the information in view of the direction of counsel.

Mr. Rockwood: Mr. Examiner, I wish to remark in connection with the testimony of this witness, although not directed particularly at this, request respectfully when a witness gets on the stand and tells about his business, that we may cross examine him on any subject which is relevant with respect to the subject to which his direct examination was directed and we are not restricted or confined to only that material which the witness would be quite willing to furnish. We can ask anything and short of resorting to the protection of the Fifth Amendment I think the witness may be required to answer.

Exam. Dishman: They do not want to furnish this data so we can't direct them to do so.

Mr. Maguire: The thing is there is no question about the right of counsel to elicit information on the witness stand during the course of the cross examination of the witness if the witness has that information available or, for that [fol. 968] matter, can give an estimate of it.

We would have no objection to that but when they ask a witness to go out and dredge through six months' records, I think that is an unreasonable request and beyond the scope of normal, proper and reasonable cross examination. That is the basis of my objection, not the materiality of it, but to unreasonable cross examination, and all that any party is entitled to is the opportunity for reasonable cross examination.

Mr. Rockwood: As a matter of fact this witness has not said he couldn't or wouldn't do it.

Mr. Maguire: I know, but—

Mr. Rockwood: Please may I finish? It is not for Mr. Maguire to say that the witness will not answer it.

Mr. Maguire: He is my witness.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: I take if I should make the request which was suggested in the question I last asked of the witness the Examiner rules that the witness shall not be required to furnish the material.

Exam. Dishman: He will not be directed to do so.

By Mr. Rockwood:

Q. Let me ask this: Are you willing to do this, Mr. Bowman?

Mr. Maguire: I object to his even being asked to do it, as [fol. 969] unreasonable cross examination.

Mr. Rockwood: I haven't asked him to do it yet.

Mr. Maguire: You asked him whether he would be willing to.

Mr. Rockwood: That is right.

Exam. Dishman: We have had enough on that, haven't we?

Mr. Rockwood: No, we haven't.

Exam. Dishman: My ruling is he won't be directed to furnish that information.

Mr. Rockwood: I will note an exception.

By Mr. Rockwood:

Q. Are you able to make an estimate of the number of carloads moved to points on the S. P. & S. to which you refer, these 26 dealerships, were unloaded or partially unloaded at these stations in the first six months of 1954?

A. No, I couldn't make an estimate of that. I don't follow shipments and bills of lading, covering shipments so closely that it would be possible. I would have to refer to the records.

Q. Do you know, Mr. Bowman, whether or not in the year 1953 there was a single carload of agricultural implements shipped by J. I. Case Company which terminated on the S. P. & S. between Portland and Spokane?

A. I couldn't even answer that question from here.

Q. You are not prepared to assert there were any?

A. No, I wouldn't.

Q. When you testified on direct examination, you said [fol. 970] that your business with the Pacific Northwest was from 200 to 250 cars a year?

A. Yes.

Q. What territory do you include in the territory Pacific Northwest?

A. Western Montana, Washington, and the northern half of Oregon?

Q. And Idaho?

A. Part of Idaho; western Idaho.

Q. Is there any territory in Idaho between Montana and western Idaho that you do not include in the Pacific Northwest.

A. I wouldn't know of any that lays in there by way of just recollecting on geography.

Q. In the state of Idaho what are the principal agricultural regions, in northern Idaho, in the panhandle, or in southern Idaho served by the Union Pacific?

A. In Idaho, the southern, the eastern, the central and the northwestern.

Q. The principal district is the entire state?

A. There are several districts that are—

Q. Yes, but is it not true that what may fairly be characterized as the principal agricultural district in Idaho is in southern Idaho, served by the Union Pacific?

A. I would believe that to be fair.

Q. In the state of Washington, first, eastern Washington, is it a fact that that is largely a grain territory?

[fol. 971] A. There is very large grain territory throughout—

Q. Eastern Washington?

A. Generally, in the state of Washington.

Q. But considering eastern Washington by itself, the major agricultural production excluding livestock, of course, is wheat and fruit in the Yakima and the Wenatchee Valleys, isn't that true?

A. I am sorry; I am not a salesman or a territory man or conversant with the location of these agricultural areas, so I cannot answer your question directly.

Q. I take it, then, you could not tell us what the principal crops are in any portion of the state of Oregon?

A. No, I couldn't tell you that.

Q. Except for the fact that generally western Washington west of the Cascades has some agricultural, you cannot tell us the nature of the crops, or whether they are major or minor districts?

A. No, sir, I can't answer that question.

Mr. Rockwood: I am going to make a request on the record that this witness prepare and furnish for the record for the first six months of 1954 for each carload destined to points in Oregon or Washington the following information: 1. The car number; 2. The origin; 3. The outbound billing from the factory, to show the route, destination, and direction for stops for partial unloading.

[fol. 972] Mr. Maguire: For the states of Oregon and Washington?

Mr. Rockwood: Yes.

Mr. Maguire: I object to that on the same grounds that I objected to the former request that counsel made, on the ground that that is not within the reasonable or proper

scope of cross examination. Here this request runs not only to the portion of those states through which the S. P. & S. system operates, but also for all the rest of the state served by all of the short railroads; he is asking for an abstract of the first six months' business of 1954 for two entire states which are agricultural states in which they do substantial business. I think that is entirely an unreasonable and an outrageous request to make.

Exam. Dishman: You decline to accede to the request?

Mr. Maguire: I certainly do.

Mr. Rockwood: The total business in the whole Northwest including Idaho and western Montana is 200 to 250 cars to Oregon and Washington, and for six months it can't be more than 100 to 150 cars.

Mr. Maguire: You don't know how much it is.

Mr. Rockwood: No.

Exam. Dishman: The same ruling. The witness will not be required to supply it.

By Mr. Rockwood:

Q. Can you make an estimate of the number of cars shipped in the first six months of 1954 which would come [fol. 973] within the category of my immediately preceding question?

A. No.

Exam. Dishman: What was your answer?

The Witness: No, sir.

By Mr. Rockwood:

Q. Where, Mr. Bowman, do you have warehouses; where does J. I. Case Company have warehouses or maintain warehouse stocks in the states of Oregon and Washington?

A. Spokane, Washington and Portland, Oregon.

Q. Do you have any arrangement for warehousing in Seattle in warehouses other than company-owned warehouses?

A. No.

Q. Or in Tacoma?

A. No, sir.

Q. What is your general practice as to distribution of your product out of warehouses; in other words, is it done by motor truck or by rail?

A. Both.

Q. Do you have carload shipments out of your warehouse stock from Portland, we will say, to destinations in Oregon?

A. I believe we do, although I haven't checked on that feature of it, recently.

Q. You can't be positive but you think so?

A. I think so.

Q. Do you have carload shipments by rail out of your warehouse stock at Spokane?

[fol. 974] A. I am very sure we do.

Q. When you use trucks do you use common carrier trucks or do you use the private vehicles of your dealers or customers?

A. Both.

Q. In some cases the customers will come right to the warehouse in Portland and load on their own vehicles?

A. Either Portland or Spokane.

Q. Yes, and that applies to Spokane?

A. Yes.

Q. If you ship by rail out of the Portland warehouse or the Spokane warehouse, you would not be able to move on a transit rate unless you had the minimum weight for a carload specified in the tariff, could you? You couldn't move a part carload out of a Portland warehouse on a transit rate?

A. I think you can by surrendering sufficient inbound tonnage to get the minimum carload weight.

Q. And pay them on the carload rate to final destination?

A. Pays the balance of carload rate to final destination.

Q. Do you do that?

A. I am sure we do that. We have been doing that for years.

Q. When you ship less than carload loads on that basis—

A. I have known of it to happen that way, loaded that way, and shipped beyond, at carload rate.

Q. Coming back to this matter of routes if you billed a car out of a plant in this Wisconsin-Illinois-Iowa territory

[fol. 975] routed via Minnesota Transfer and Great Northern, you could not partially unload at any point on the Northern Pacific and Milwaukee, could you?

A. Not that I know about.

Q. And if you routed that car from your plant via Minnesota Transfer and Northern Pacific, you could not unload that car partially at any Great Northern or Milwaukee point, could you?

A. Not that I know about and I just want to be certain of the question you are asking. You are referring strictly to the Great Northern, Milwaukee and the Northern Pacific in that connection.

Q. In my questions, yes; you could not unload if the car stopped on the Great Northern,—you could not stop at any intermediate Northern points for partial unloading; you could not get partial unloading on the Northern Pacific?

A. No.

Q. If you loaded at Omaha on Northern Pacific, you couldn't get partial unloading at Great Northern, Northern Pacific or S. P. & S. points, could you?

A. I am not quite clear about it but I believe there are some routes via Butte, Montana which would permit the Great Northern and Union Pacific to do that.

Q. Do those apply to through routes to Oregon and Washington?

A. I believe they do.

Q. Are you sure of that?

[fol. 976] A. No.

Q. If you routed that carload from your plant served by the Milwaukee in this case, Milwaukee to Marengo, you would not be permitted to unload at Great Northern, Northern Pacific, or S. P. & S. points, would you?

A. No.

Q. Moving beyond Marengo on Union Pacific points you could unload at them?

A. Yes.

Q. Don't these situations, as I describe them, illustrate a policy of all the railways to the Pacific Northwest of retaining to themselves the long haul wherever they can?

A. That I would believe to be a fact.

Q. Is the business of J. I. Case Company seasonal?

A. Yes, sir.

Q. What is your heaviest shipping season?

A. Through the middle summer to the fall.

Q. That is, from the factories your heaviest shipping season is from the middle summer?

A. From the middle of May to the end of September.

Q. At what season of the year do you receive your heaviest orders from dealers?

A. That is a condition that depends a good deal on the times, particularly, and the reasons and the crops. Sometimes, particularly, and the seasons and the crops. Some-
[fol. 977] times it is very seasonable, depending very much on the condition that exists.

Q. Am I wrong in assuming that year in and year out there on the average the heaviest order season precedes your heaviest shipment season,—begins in May?

A. No, you are more right than wrong about that.

Q. That is about it?

A. Yes, and I would like to answer that other question a little more broadly. We have been through a period of time, take way back to 1940 when you were up against a condition of shortage of goods and in such a period of time when there is a shortage of goods the customer,—the dealer and the customer will place his orders very much longer in advance than he would when conditions are more what you would like to call a normal nature of time, so that changes the picture very much according to the times.

Q. You would call the last three or four years what we would like to call normal?

A. Quite close to it, except not the past two years. The amount of surpluses that have developed in the country have caused a condition that doesn't tend to calling itself normal.

Q. When you get your orders in they may come from destinations in California or they may come from destinations—you don't do business out there?

A. Not throughout that territory. We have separate or-
[fol. 978] ganizations in California conducting our business in California.

Q. Do you manufacture the material in the Middle West and ship to California?

A. Sir?

Q. Do you manufacture in the Middle West and ship to California?

A. The same plants we are talking about presently, and I understand you are still talking about our plants in the central west.

Q. That is right.

A. That is right.

Q. You wouldn't ship from those plants to California at all?

A. We sure do.

Q. That is what I thought, and you distribute through—

A. Our own California agencies.

Q. But you ship to California; you ship, I take it, generally to all agricultural districts in the United States, both east and west of your plants at Racine and surrounding territory?

A. You are correct about that.

Q. When orders come in, is it part of the job of your department to match up these orders—

A. No, sir.

Q. Wait a minute: To line up cars so that they may be stopped for partial unloading along routes where you are getting a joint rate on a through route?

A. Not particularly in the line of the question you are [fol. 979] asking. However, by way of providing routing for the carload movements the question of lining up routing for stopovers does come through our Traffic and Transportation.

Q. If you have a group of orders, we will say, from Pocatello, Idaho and Umatilla, Oregon, both of which are served by the Union Pacific and some orders from Portland, which is also served by the Union Pacific, and at the same time you had orders, we will say, from Sand Point, Idaho, we will say, on the Northern Pacific and Yakima, Washington on the Northern Pacific; you would see to it that the Yakima order and the Sand Point order got in one car and the Pocatello order and the Umatilla order would get in another car, wouldn't you?

A. Well, I am not testifying I am conversant exactly that Sand Point and Yakima are on the same railroads; Umatilla and Pendleton—

Q. Pocatello, I said.

A. We are talking about the shipments on destinations and stopover points being intermediate; that will be our problem to provide routing that will be satisfactory.

Q. You will not mix up, if you will take my word, Sand Point there on the Union Pacific; you would not mix Sand Point with an Umatilla order, on the same car?

A. But being if they are on the same car, the routing would be provided or permitted, we would not permit such an order.

Q. And in the case of the Pocatello, Idaho and Umatilla, [fol. 980] Oregon orders, you would see to it that that car got routed via the Union Pacific all the way from Omaha, so that it could be stopped at Pocatello and at Umatilla, would you not?

A. You are covering too broad a territory now when we get back to Pocatello. Pocatello is not in the territory of Portland-Spokane; Pocatello is over in our Salt Lake City territory.

Q. Maybe my illustrations are poorly selected; they probably are, but we will take instead of Pocatello, Pendleton, Oregon and Umatilla; you will see to it that that car got routed either Union Pacific; all the way from Omaha, or Milwaukee-Marengo, Union Pacific, would you know?

A. I am presuming without maps before me one point is intermediate to the other and as such we would route it by the most direct line. However, sometimes we exercise a preference where the routing is permissible.

Q. Well, I think we are together on the point I was developing. Are your shipments from your factories firm orders; that is, you don't ship from the factory until you have an order for the material, until the goods are sold?

A. Well, I would say in answer to that 90 percent would be, although we have spoken earlier of the diversions that are made and oftentimes those diversions are made because of the fact that it is the desire to make a delivery otherwise than first intended, so the subject of firm orders might

[fol. 981] not be entirely governing there, although I will answer you that 95 percent are firm orders.

Q. Do you ever send a car out from your middle western plants for which you do not have an order?

A. We have a shipping order for all cars that we—

Q. And for which you do not have an order from the dealer or an order for warehouse stock?

A. No.

Q. You do not indulge in the practice which has been described here of the lumber wholesalers who will start a car out unsold and hope to sell it before it gets to destination?

A. No, we don't practice that as a practice.

Q. As a consequence—

Mr. Maguire: Could I interrupt? I want to make sure I am following your line, and I hasten to assure you I am not trying to coach the witness as I have been accused of doing, but as I gather it, the sole purpose of your inquiry is to bring out the fact that there are no transit cars in agricultural implements and equipment, and when you are talking about an order you are talking about an order for warehouse stock in Portland or Spokane or to a dealer; is that my understanding of your question?

Mr. Rockwood: Yes, as I understood the witness describe it that way.

Mr. Maguire: I wanted to be sure of it.

[fol. 982] By Mr. Rockwood:

Q. You talked about the Clatskanie car. Do you have the information to show the billing of that car as it left your factory in the middle west?

A. I had it yesterday but I left it home; it is easily furnished.

Q. What do you have, the bill of lading?

A. I had a record of the movement; I did not carry the bill of lading with me.

Mr. Rockwood: I would like to have from Mr. Bowman with respect to that Clatskanie car that he referred to in his testimony yesterday, the day it left the middle west,—this

is one car, Mr. Maguire,—the date it left the factory in the middle west, the car number, the billing of that car to show route, and consignee, and destination—

Mr. Maguire: There is just one question—

Mr. Rockwood: Wait a minute; I have some more; and any directions in the shipping order for stop for partial unloading and also a statement of the fact whether it was partially unloaded enroute.

Mr. Maguire: I don't know. I think we might be treading on the edge and I think the witness should be advised as to his rights there, that if by giving a car number, that that information could be used by his competitors to his disadvantage, in which case it is unlawful to elicit that information without the consent and the understanding con- [fol. 983] sent of the shipper or consignee but otherwise aside from that, I have no objection whatever to that information being furnished, if Mr. Bowman can furnish it.

Mr. Rockwood: Mr. Examiner, in this case I have restricted my request as much as possible. If we can identify that shipment we can trace and get the dope on it ourselves, and we will. We can't identify it unless we have the date of the shipment and the car number.

Exam. Dishman: Can the witness compile it?

The Witness: I can furnish the full information that counsel desires and I shall do so by submitting it to Mr. Maguire who can turn it over.

Exam. Dishman: May that be included in the other data to be included as a late-filed exhibit. Could that all be part of that one late-filed exhibit?

Mr. Rockwood: Yes.

Mr. Maguire: I have no objection.

Exam. Dishman: All right.

Mr. Rockwood: I have nothing further. I reserve the right possibly to ask for something more when I see this data but I think the possibilities are slight that I will ask for any more except as I repeat the request the Examiner has overruled.

Exam. Dishman: Is there any other cross examination?

Mr. Torinus: No questions.

Mr. Golden: No questions.

[fol. 984] Redirect examination (continued).

By Mr. Maguire:

Q. Mr. Bowman, I would like to direct your attention to the cross examination by Mr. Rockwood as to the impossibility of a car starting off on the Great Northern partially unloading it on the Great Northern, and then switching it over on the Northern Pacific.

Do those two companies, from your observations of the tariff, preserve what Mr. Rockwood has characterized the general policy of keeping their traffic to themselves as against each other?

A. Yes, sir, to the best of my knowledge.

Q. You say that your company when it has orders for delivery at two different points, that each one of these points is intermediate on a route which carries a joint through rate or which carries a through rate to the other, that you try to line up your cars accordingly. Do you always have orders on hand which will enable you to match up these cars or line up these cars in the manner that Mr. Rockwood suggested to you? In other words, do you get an order, using his illustration, from Pendleton and one from Umatilla; is there any certainty you can get those orders at the same time or to be filled at the same time so that you can put them in the same car, or do you take your orders as they come and then match up to the best of your ability?

A. The orders are submitted by the dealers through the [fol. 985] branch house controlling the territory. They are matched up at the branch house and submitted from the branch house to the main general offices.

Q. But in the ordinary course of your business, is it always possible to match up one order with some other orders, or do you have a backlog of orders you can match up or sometimes do you have to make such adjustments as you can?

A. Occasionally, but in the main those orders come to you in such condition that they are fairly well matched up. Sometimes they require revision but in most cases, not.

Q. By the time you get them they are matched up because they come from the branch house?

A. They move through the branch house.

Q. So far as the general conduct of your business is concerned, do you know in the general course of business, —do you know you have always a backlog of business you can match up or is it sometimes necessary to make adjustments?

A. Very often it is necessary to make adjustments even when cars are in transit.

Mr. Maguire: I think that is all I have.

Recross examination (continued).

Q. Do I understand then the dealers or district houses in the first instance match up these orders and then you sometimes have to make adjustments back in your offices in Racine?

A. The branch houses will generally match the orders [fol. 986] and oftentimes we are requested to adjust them at Racine. We do not receive orders direct from the dealers.

Mr. Rockwood: That is all.

Mr. Hillman: Because of my recent entry into the case perhaps I wasn't prompted quickly enough to ask one or two questions that I would like to ask.

Exam. Dishman: All right.

By Mr. Hillman:

Q. Mr. Bowman, do you make any Racine plant shipments from your Racine plant via the Minnesota Transfer to points served by the S. P. & S.?

A. Yes.

Q. Are those shipments generally divided between the Milwaukee and Northwestern which you testified both served your Racine plant; that is, on the routing up through the Minnesota Transfer points?

A. The practices of providing the railroads?

Q. No, not of any particular proportional division but you do follow the practice of dividing shipments between those two carriers from Racine to Minnesota?

A. Be more clear about what you mean by dividing.

Q. Both Milwaukee and Northwestern participate in the

traffic from your Racine plant which is routed via the Minnesota Transfer to points on the S. P. & S.?

A. Yes.

Q. Do you anticipate that if the proposal of the Mil- [fol. 987] waukee in this proceeding were granted and through routes became available with joint rates from Racine to these points, that there would be any change in your practice of routing shipments via the Northwestern through Minnesota Transfer to the points involved in this proceeding?

A. I do not know any reason for any change.

Mr. Hillman: Thank you.

Exam. Dishman: Is that all?

Mr. Hillman: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Let the record show that Witness Meyer is resuming the stand for further cross examination.

LLOYD MEYER resumed his testimony as follows:

Cross examination (continued).

By Mr. Rockwood:

Q. Would you proceed to read into the record the seven letters which I enumerated yesterday, including the two from the Oates Lumber Company, the one directed to your company and the one to the Interstate Commerce Commission.

A. Do you wish them to be read in the order you enumerated yesterday?

Q. It is immaterial, if you will identify each letter by the company, date, addressee.

A. The first letter is from Consumers Lumber Company, [fol. 988] Spirit Lake, Iowa, dated June 25, 1954. It is addressed to a Mr. W. E. Badeaux, secretary, Northwestern Lumbermen's Association, 1013 4th Avenue South, Minneapolis, Minnesota, and it reads:

"You have probably had earlier correspondence with the Milwaukee Railroad soliciting the assistance of the Association in securing direct routes on lumber shipped into Iowa from the West Coast. I have gone over this situation with the representative of the Milwaukee Railroad and would like to urge the Association to support the Milwaukee in their efforts with the Interstate Commerce Commission under Docket 31466.

"In this proceeding the Milwaukee Road is seeking authority to publish joint through rates and routes with the S. P. & S., Oregon Trunk and Oregon Electric, via the Spokane gateway. Similar rates and routes are in effect at the present time via this gateway, in connection with the Great Northern or the Northern Pacific. We feel the action of the Milwaukee Road in attempting to secure these additional routes is beneficial to the lumber industries in the state of Iowa. To begin with it has been our experience that a number of producers and brokers cannot concentrate their sales effort in this area to the same extent that they can in other states.

"Points on the Milwaukee Road have always been hindered in their inability to secure the consideration in purchase of lumber that has been given to dealers in other states, one of the reasons being that it is necessary at the [fol. 989] present time to route all of this traffic in connection with the Great Northern or Northern Pacific Railway.

"If the Milwaukee Railroad is granted the authority which they are seeking under this docket, the publication of rates and routes via the Spokane gateway will give to we receivers a greater flexibility of service; it will enlarge our diversion and reconsigning privileges and it will permit us to obtain more favorable consideration in the purchase of lumber.

"We also believe that the publication of these routes would give the lumber industry in the state of Iowa greater opportunity for expansion. It can be visualized that with the broadening of these services there are possibilities for the construction of treating plants, sash and door plants, and other facilities that would redound to the benefit of our state. Our yards are serviced by the Milwaukee Railroad and we are interested in seeing that the Association represents us at this hearing.

"I hope you will give this matter your attention". And it is signed: Fred A. Weber.

The next one is from the E. W. Oates Company, Storm Lake, Iowa. The first letter is directed to the Northwestern Lumbermen's Association, Minneapolis, Minnesota, dated July 1, 1954 and reads as follows:

"We are enclosing a letter to the Interstate Commerce Commission as outlined by the Milwaukee Road. They request we forward this to you for attention."

[fol. 990] The attached letter reads; this is also on the letterhead of the E. W. Oates Company:

"Interstate Commerce Commission,
"Chicago, Illinois.

"Gentlemen: Our business being located on the Milwaukee Road, we are naturally interested in Docket 31466, wherein the Milwaukee Railroad is requesting permission to compete with the Great Northern and Northern Pacific Railroads on cars originating from points on the S. P. & S., Oregon Trunk and Oregon Electric via the Spokane gateway.

"Similar rates are in effect at the present time via the Gateway in connection with the Great Northern and Northern Pacific Railroad. We feel the action of the Milwaukee Railroad in attempting to secure these additional routes will be beneficial to the lumber industry in general throughout the state of Iowa. Points on the Milwaukee Road have always been at a disadvantage with points on other railroads in making purchases from mills on the S. P. & S., Oregon Trunk and Oregon Electric lines.

"You would not only benefit us in our purchases but would create more business for the S. P. & S. and Oregon Trunk, etc. Now that the center of the lumber industry is changing from the Puget Sound area to the Oregon area it is of still more importance as time goes on. We trust that you will give this every consideration and rule in favor of the Milwaukee Railroad request."

[fol. 991] Mr. Golden: Did you give the date on the attached letter?

The Witness: No, I did not. That was dated June 26, 1954.

A. (continued) The next letter is from the Smith Lumber Company, Milford, Iowa, dated July 13, 1954 directed to the Northwestern Lumbermen's Association, directed to the attention of W. H. Badeaux and reads as follows:

"It has just come to our attention there is a proposal being considered by the Interstate Commerce Commission under Docket 31466. In this proceeding the Milwaukee Road is seeking authority to publish joint through rates and routes with the S. P. & S., Oregon Trunk and Oregon Electric via the Spokane gateway.

"Similar rates and routes are in effect at the present time via the Gateway in connection with the Great Northern or the Northern Pacific Railroad. We feel the action of the Milwaukee Road in attempting to secure these additional routes is beneficial to the lumber industries in the state of Iowa.

"To begin with, it has been our experience that a number of producers and brokers cannot concentrate their sales in this area to the same extent as they can in other states. Points on the Milwaukee Railroad have always been hindered because of their inability to secure the consideration in purchase of lumber that has been given to dealers in other states, one of the reasons being that it is necessary at the present time to route all of the traffic in connection [fol. 992] with the Great Northern or Northern Pacific Railroad.

"If the Milwaukee Railroad is granted the authority which they are seeking under this docket, the publication of rates and routes via the Spokane Gateway will give we receivers a greater flexibility of service. It will enlarge our diversion and reconsigning privileges and it will permit us to obtain more favorable consideration in the purchase of lumber.

"We also believe that the publication of these routes would give the lumber industry in the state of Iowa greater opportunity for expansion. It can be visualized that with the broadening of these services there are possibilities for the construction of treating plants and other facilities that will be beneficial to our state.

"We believe that this matter is of sufficient importance that we should have representation at these hearings and this is a request that your association take whatever action is necessary to protect our interests."

The next letter is from the C. W. Chapman Lumber Company, Waterloo, Iowa, dated June 28, 1954 to Northwestern Lumbermen's Association, Minneapolis, Minnesota and reads as follows:

"The other day a representative of the Chicago, Milwaukee, St. Paul & Pacific Railroad stopped in to discuss with us a play to benefit lumber dealers in providing additional railroad facilities near the producing areas.
[fol. 993] "You are no doubt familiar with this set-up as your contact is with a large number of dealers, but it seems that anything to help in car supply and lines serving the industry as a whole are desirable. If you have any information of benefit we would be glad to hear it."

Mr. Maguire: Just a moment; is that "play" or "plan"?
The Witness: It is play; he means plan but I read it just as it is here.
Mr. Maguire: I see.

A. (continued) The next one is from Hart Lumber Company at Newton, Iowa, dated June 29, 1954 to Northwestern Lumbermen's Association, Minneapolis, Minnesota and reads as follows:

"We have one yard located in Le Claire, Iowa, which is served by the Milwaukee Railroad, and one yard at Charlotte, Iowa is also served by the Milwaukee Railroad by trucking our material to the station at Delmar.

"At various times it would be to our advantage to have the option of additional routing by way of Spokane and for this reason we would like to have the Northwestern Lumbermen's Association support the S. P. & S. case. Quite often it is very important to us in saving time in transit on cars of lumber which are urgently needed and we feel certain that if the Milwaukee Railroad has the same privileges that some of the other lines have in the northwest, that this would be definitely beneficial to our cause."

[fol. 994] "We are requesting that the Association give support to the S. P. & S. case.

"Thanking you for doing so."

The next one is from the Denniston & Partridge Company of Newton, Iowa and is dated June 29, 1954:

"Northwestern Lumbermen's Association,

"Minneapolis, Minnesota.

"Gentlemen: We are in favor of the Northwestern Lumbermen's Association giving support to the S. P. & S. case. Our company has three yards located on the Milwaukee in the towns of Perry, Dawson and Linden, and we feel if the Milwaukee Railroad Company has equal privileges with other lines, this service could be beneficial to our company.

"As you know, quite often in the past railroad cars have been very scarce at lumber mills on the west coast and by having another large mill like the Milwaukee that could furnish empties during times of scarcity, this could be beneficial not only to the three yards we have located in towns where the Milwaukee serves but also to our other yards located in other towns in central Iowa.

"We hope that you will do all you possibly can in assisting the Milwaukee in the S. P. & S. case.

"Thanks for your consideration."

The next letter is dated August 27, 1954 and it is from the Standard Lumber Company at Winona, Minnesota:

[fol. 995] "Northwestern Lumbermen's Association,

"Minneapolis, Minnesota.

"Gentlemen: I have had some correspondence with the Chicago, Milwaukee, St. Paul & Pacific Railroad in regard to rates on lumber from points located on the Oregon Electric Railroad, which is a subsidiary of S. P. & S. in Oregon, such as Waterloo to local points on the Milwaukee in Minnesota. There are no published through rates, which makes the cost of lumber delivered from points like Waterloo, Oregon, to points like Wheaton, Minnesota exorbitant.

"Mr. George Bates, General Northwest Freight Agent of the Chicago, Milwaukee, St. Paul & Pacific Railroad in Minneapolis, advises me there will be a hearing early in October in Chicago, before the Interstate Commerce Com-

mission Examiner, and I think it would be within the province of the Association to be represented at this hearing and to appear as a witness for the Milwaukee Railroad and outline to the Commission the importance of having joint rates with the Oregon Electric as well as with the S. P. & S.

"Would you give this case consideration and, if necessary, talk to Mr. Bates and if you agree with me perhaps Mr. Lloyd Meyer could appear at the October hearing. Please advise."

That is signed: H. S. Horton, Vice President. That completes the reading of the letters.

By Mr. Rockwood:

Q. May I have for examination the first one, that of the [fol. 996] Consumers Lumber Company and the third one, the Smith Lumber Company letter, just for the purpose of one question?

A. Yes.

Q. I suppose that you have noticed, Mr. Meyer, that beginning with the second paragraph of the Smith Lumber Company letter, beginning with the words "In this proceeding" and the corresponding paragraph in the Consumers' letter: "In this proceeding", the letters are identical with the exception of the final paragraph of each?

Mr. Maguire: Mr. Examiner, the letters speak for themselves. Counsel can argue that later on.

Mr. Rockwood: May I ask a question, Mr. Maguire?

Mr. Maguire: I am objecting to that question because the letters speak for themselves.

Mr. Rockwood: I haven't asked the question yet.

Mr. Maguire: You said: Have you noticed there is this similarity.

By Mr. Rockwood:

Q. Have you noticed it?

Mr. Maguire: I object to the question.

Exam Dishman: The letters will speak for themselves.

By Mr. Rockwood:

Q. I call your attention to the fact that the language in these letters is identical. Do you know who the author of these identical letters was, in each of the two letters?

[fol. 997] A. No, sir.

Q. Those came to you, one from Milford, Iowa and the other from Spirit Lake, Iowa, and you did not make any effort to determine the authorship of the two letters, did you?

A. No, sir, I did not.

Q. How many of these destinations for yards of the seven companies who wrote these letters, can be reached on joint through rates from S. P. & S. points via Spokane, via the Great Northern or Northern Pacific to Minnesota Transfer and by a connecting line beyond Minnesota Transfer to destination?

A. I can't answer you right definitely the exact number of towns. There are some of them, quite a few of them,—those in Iowa,—some of those in Iowa can be reached by them.

Q. Could you name one in Iowa covered by these letters, that cannot be reached on a joint through rate over that route?

A. Right offhand, I can't.

Q. For instance, Winona, Minnesota, can be reached by Minnesota Transfer and other line or lines, beyond Winona on Minnesota Transfer on a joint through rate, can they not?

A. Yes.

Q. Just another example, the first two letters, one from Spirit Lake and the other from Storm Lake, both of those can be reached by Minnesota Transfer and another line or lines beyond those destinations, can they not?

A. What were the names of the towns?

[fol. 998] Q. Spirit Lake and Storm Lake?

A. They can be reached by the Transfer, yes.

Q. On a joint through rate?

A. Yes.

Q. Waterloo is another one that can be so reached, can it not?

A. Yes; that can be reached.

Q. Waterloo, Iowa, is not on the Milwaukee, is it?

A. No, I don't believe so. I don't know. I don't believe the Milwaukee gets into Waterloo.

Q. If Waterloo, Iowa, can't be reached by the Milwaukee, what good is it going to do to the man at Waterloo to have rates through Milwaukee?

A. Because he has rates on the Milwaukee.

Q. From where?

A. Tama for one; Independence, Iowa.

Q. Can they be reached by the Minnesota Transfer,—Tama and Independence?

A. I believe they can.

Q. Are you familiar with the practice which has been described of selling lumber by means of transit cars from the Pacific Northwest to the consuming areas in other parts of the country?

A. I know it is being done. I would not consider myself an authority on it.

Q. Do you know anything about routes of the various carriers over which the so-called transit cars move?

[fol. 999] A. Well, I am vaguely familiar with it. It depends on how many routes you want to include, when you say routes,—more than one route.

Q. Do you know anything about the practice of those who ship transit cars in the Pacific Northwest into this Milwaukee territory as to the routes specified by them when the cars do move Milwaukee east of Spokane?

A. No; that is controlled, I believe, by the mills on the west coast whom I do not represent and I am not familiar with their practice.

Q. Your association which you told me has 2500 yards, which means some 1500 individual members, do they have a board of directors?

A. Yes, they do.

Q. Are you subject to the directions of the board of directors?

A. Indirectly.

Q. Did your board of directors take any action with respect to this case?

A. No.

Q. Was it presented to your board of directors?
A. No.
Q. So that you are not speaking for the Association in any way and are only speaking for these individuals who have directed communications to you, is that right?
A. That is true, and I so specified in my statement.

[fol. 1000] By Mr. James:

Q. You mentioned in your statement about part unloading carloads of lumber. Could you furnish any detail of the carloads which have been part unloaded in the Milwaukee territory?
A. The number of stops that are partially unloaded?
Q. That is right.
A. I have no figures; I know it is done quite often.
Q. Do you have a number of members along the line of the Northern Pacific west of the Twin Cities?
A. Yes.
Q. Do they conduct their business somewhat in the same manner as these do located on the Milwaukee?
A. I would think so.
Q. Do you think the situation would be pretty much the same so far as part orders are concerned?
A. I am not quite clear as to what you are asking me. I would be glad to answer your question if I can know just exactly what you mean.
Q. Your membership is made up of retailers of lumber?
A. That is right.
Q. I am asking you whether those who are located along the line of the Northern Pacific would conduct their business similar in fashion to those located on the Milwaukee.
A. You mean so far as transportation is concerned?
Q. That is right.
[fol. 1001] A. I would say Yes.
Q. Pursuing this partial unloading matter further and I am quite ignorant about it but you did not testify on direct concerning a company at Linton, North Dakota, who had a yard at Mobridge having difficulty in his effort to partially unload at Mobridge and to complete unloading at Linton, and you said this same situation exists at La Crosse, Wisconsin, is that correct?

A. Yes.

Q. From what sources did you obtain the information with respect to this La Crosse matter? Where did you learn this and—

A. I just read a letter from a member who has a yard at La Crosse; he has one at Montevideo.

Q. Is that letter the source of your testimony about the partial unloading?

A. Yes.

Q. And you have no other information on that subject, I mean related to those two communications?

A. As to those two points, yes.

Q. Do you have further information?

A. I don't want to go beyond my original statement. We could go on and cover the entire state and you would find a lot of similar cases but I don't want to go beyond my original statement because it is going to involve a tremendous amount of support for the complainant.

[fol. 1002] Q. I am not asking you to go farther geographically but I want to be sure your testimony is based on the letter from the Standard, I believe is the name of the company.

A. That is right.

Q. All the information you have is contained in that letter as related to this case; I mean, as applied to that particular member.

A. That is true. He has complained. He has asked us to represent him.

Q. I understand that.

A. There is an example.

Q. But the information, the factual information is contained in the letter on which you base your testimony?

A. I don't agree with that. I determine that from the tariff.

Q. The information about the practices that exist was obtained from the letter they wrote you, is that correct?

A. Yes.

Q. How many instances, say, in the year 1953 were there, if you know, at La Crosse and Winona? You didn't get that information?

Mr. Maguire: Could I have that question identified? I would like to ask a question on your question: Do you mean how many instances it doesn't happen?

Mr. James: No; I am quite inept but not that inept.

Mr. Maguire: I am not accusing you of being inept.

[fol. 1003] By Mr. James:

Q. Can you tell me how many instances partial unloading occurred with respect to LaCrosse or Winona or Montevideo of the Standard Company, I have forgotten the whole name?

A. No, I can't tell you the exact number. The man has 70 some yards, and I am sure a lot more than I have cited.

Q. That is, you think there were others, is that right?

Mr. Maguire: He said he is sure there are others. You didn't understand his answer, perhaps.

Mr. Rockwood: You were simply reiterating what the witness said.

Mr. Maguire: Yes, but where counsel, whether you or anybody else misunderstands the answer of a witness and incorrectly repeats it, I certainly feel I have the right to correct it and I have no apologies for the interruption.

Exam. Dishman: Proceed.

By Mr. James:

Q. Does your association send out bulletins covering matters of general interest, or circulars?

A. Occasionally.

Q. Did it with respect to this matter?

A. No.

Q. Nothing went out in writing?

A. No.

Q. How did you communicate with the members as related to this pending proceeding?

A. How did I communicate with them?

[fol. 1004] Q. Yes; how did you get word to them?

A. We didn't solicit these letters; they came to us.

Q. I believe the letters you mentioned are those which

were read by you a little while ago on cross examination by Mr. Rockwood?

A. That is right.

Q. Those were seven in number?

A. That is right.

Q. And you have something like 2300 members?

A. That is right.

Mr. James: That is all.

Mr. Boe: May we be off the record?

Exam. Dishman: Yes.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Boe:

Q. Mr. Meyer, you referred, among these different companies, to C. W. Chapman Lumber Company. That company is located at Waterloo, Iowa, is it not? We are not talking about two Waterloos; that is why I emphasized it.

A. Their general office is at Waterloo, Iowa.

Q. They do not have a general office at Waterloo, Oregon, which is mentioned in letters in this proceeding?

A. Not that I know of.

Q. Do you know the railroads that actually serve Waterloo, Iowa? Can you name them?

[fol. 1005] A. It would be purely a guess. If you want me to guess, I will guess.

Q. No, I don't want you to guess.

A. I don't know.

Q. Do you know whether or not the Milwaukee Railroad reaches Waterloo, Iowa?

A. I do not know.

Q. Have you been testifying on the assumption it does?

A. No.

Q. You have also referred to the Denniston & Partridge Lumber Company of Newton, Iowa, and I believe on your direct examination you said there were 28 yards, am I correct about that?

A. As I have them enumerated here, I believe it does total 28 yards.

Q. I believe further on you referred specifically to situations at three of the yards of the Denniston & Partridge Lumber Company, is that correct?

A. Yes.

Q. Your testimony doesn't deal, so far as this case is concerned, with the other 25 yards of the Denniston & Partridge Lumber Company, is that right?

A. No, sir.

Q. Specifically, does it deal with Newton, Iowa?

A. No, sir.

Q. With respect to the Hart Lumber Company of New-
[fol. 1006] ton, Iowa, I believe you said on direct testimony that you were referring to,—or it has 2 or 4 yards, is that correct?

A. Four, I believe.

Q. Can you mention specifically where they are located?

A. Yes; Baxter, Iowa.

Q. Can you name the railroad on which that town is located, the railroad or railroads?

A. Chicago, Great Western.

Q. Could you give us another one?

A. Charlotte, Iowa. I am not sure if there is a railroad there, but he has indicated he takes delivery at Delmar, Iowa, which is located on the Milwaukee Road.

Q. Give us another one.

A. Jewel, Iowa, and that is located on the Chicago and North Western Railroad.

Q. What is the fourth?

A. Le Claire; and that is located on the Milwaukee.

Q. Hart Lumber Company is not complaining about the situation at Newton, Iowa, is it?

A. No, sir.

Q. What railroad or railroads serve Newton, Iowa?

A. Well, I believe the Rock Island is the only railroad, to the best of my knowledge. I don't know, other than that, but I do know the Rock Island operates there.

Q. Will you agree with me that the Milwaukee does not
[fol. 1007] serve Newton, Iowa?

A. I don't know.

Q. You are testifying here and you do not know whether the Milwaukee does or does not serve Newton, Iowa?

A. I do not know whether the Milwaukee Road serves Newton, Iowa, or not.

Mr. Boe: That is all.

By Mr. Musenbrock:

Q. The letter from Denniston & Partridge Lumber Company mentioned a plant at Perry, Iowa. Do you know what railroads serve Perry, Iowa?

A. I believe the Milwaukee and the M. & St. L. Railroad.

Q. How about Rock Island?

A. I don't know.

Q. Do you know to what extent the Denniston & Partridge Company divides its traffic on lumber from the Northwest to Perry, Iowa, between the M. & St. L. and the Milwaukee at Perry?

A. I don't know.

Q. Therefore you would have no and you could not have any opinion as to what effect this proceeding may have upon the traffic of the M. & St. L. if the complaint were granted?

A. I wouldn't know.

Q. As to Newton, Iowa, in answer to interrogation of Mr. Boe, I think you mentioned the Rock Island. Does not the M. & St. L. also serve Newton, Iowa?

A. I wouldn't know, Mr. Musenbrock.

[fol. 1008] Q. You made no survey of any kind in connection with these complaints of these various people, as set forth in their letters, did you?

A. No.

Mr. Musenbrock: That is all.

By Mr. Golden:

Q. One further point: I believe you mentioned yesterday that the retail yard that you represent at Linton is the Central Lumber Company?

A. That is correct.

Q. Do you know whether or not they have a plant at Bismarck or a yard at Bismarck?

A. I don't know whether they have or not; I don't think so. I can't tell you definitely.

Mr. Golden: That is all.

Exam. Dishman: Is there anything more, Mr. Maguire? We will take a short recess.

(A ten-minute recess was had.)

Exam. Dishman: The hearing will come to order, gentlemen. Has the cross examination of this witness been concluded?

Mr. Rockwood: I have no further questions.

Mr. James: Nothing further.

Exam Dishman: Mr. Maguire.

Redirect examination (continued).

By Mr. Maguire:

Q. Mr. Badeaux who is mentioned in some of these letters; what is his position with the Association?

[fol. 1009] A. He is the secretary.

Q. And are communications regarding matters in general including traffic matters or traffic questions addressed occasionally to the secretary as well as to yourself or other than yourself?

A. Yes, sir, they are.

Q. And in the ordinary conduct of the affairs of the Association, what is done with any letters addressed to the secretary or addressed to the Association which deal with matters within your province as traffic manager?

A. They are given to me to be handled as I see fit.

Q. Now, with regard to Waterloo, Iowa, do you know whether or not Waterloo is served by the Waterloo, Cedar Falls and Northern Railroad, one of the defendants in this case?

A. I don't know.

Q. Now, then, one of counsel addressed some questions to you as to the limits of your information or investigation with regard to the situations of the writers of the seven letters which had been read into the record.

In view of the broad scope of those letters, did you just make no investigation after you read the letter—read the tariff, or did you look up the rates, privileges, as well as partial unloading privileges of these members?

A. I checked to see if they had a just complaint.

Q. So the factual statements made in your prepared statement as to what can be done by these organizations, [fol. 1010] is that information derived from your letter or subsequent investigation of the tariff?

A. That would be derived from my investigation of the tariff.

Mr. James: I think he so testified.

Mr. Maguire: That is all; thank you.

Mr. Rockwood: I have nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

O. A. Behmer was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. Your name is O. A. Behmer?

A. That is right.

Q. What is your address?

A. Business address?

Q. Your business address?

A. 374 Grain Exchange, Minneapolis, Minnesota.

Q. By whom are you employed?

A. McCabe Brothers Company.

Q. In what business is McCabe Brothers engaged?

A. They are grain merchants.

Q. And in what territory do they market the grain?

A. In Minneapolis and at Spokane, Washington.

Q. Do you furnish grain to customers in the Pacific Northwest?

A. Yes, we do.

[fol. 1011] Q. And would you name some of the destina-

tion points along the Pacific Northwest area where you have customers?

A. Portland, Seattle; some right in Spokane, Astoria, Oregon; Waitsburg, Washington, and some points in California,—Sacramento and Vallejo.

Exam. Dishman: Did you state what your position with this concern is?

The Witness: No, sir. I am the traffic manager.

By Mr. Merrill:

Q. How long have you been traffic manager for McCabe Brothers?

A. A little over 8 years.

Q. Who is the customer at Astoria, Oregon, to whom you furnish grain?

A. Pillsbury, Inc.

Q. By what railroad is Astoria, Oregon, served?

A. Well, any grain we direct there moves over the S. P. & S. from Spokane.

Q. Could you state approximately the volume of grain which you supply to Pillsbury at Astoria in the course of a year?

A. Oh, I would estimate 150 cars, perhaps.

Q. From what origins do you obtain the grain?

A. From our elevators along the main line of the Great Northern and some points on the Northern Pacific, in Montana.

Q. Could you state how many elevators you have on the Great Northern in Montana, approximately?

[fol. 1012] A. Roughly, 20.

Q. And how many on the Northern Pacific?

A. About 6.

Q. So, how is the grain actually handled from Montana sources destined to the customer, Pillsbury, at Astoria, Oregon?

A. We have a man in Spokane and the grain is billed to McCabe Brothers Company at Spokane and he diverts the grain from that point to wherever it is going.

Q. When the shipment is to be made to Pillsbury does this representative of yours at Spokane have cars moved

from Northern Pacific elevators in Montana to Spokane and then on to destination at Astoria, is that the procedure followed?

A. The orders actually come from the Minneapolis office, which is the main office. However, we are in constant contact with our Spokane office and the cars are moved upon his orders through the main office.

Q. What happens to the cars then after they leave the Montana origins?

A. They are sampled in Spoke and disposition made by our Spokane manager.

Q. Do you know whether or not any grain or wheat originating on the Milwaukee Railroad in Montana is used to supply the Pillsbury mills at Astoria?

A. No, sir, it is not.

Mr. Rockwood: Is that only your company or are you [fol. 1013] speaking for Pillsbury?

The Witness: Just our company.

Mr. Rockwood: You don't sell any wheat from Milwaukee points to Pillsbury at Astoria?

The Witness: That is right.

By Mr. Merrill:

Q. Will you state why you do not supply Pillsbury in Astoria with any wheat from Milwaukee Road origins?

A. Because of the rates being too high.

Q. Do you have any joint through rates to Astoria from Montana origins on the Milwaukee Railroad?

A. No.

Q. Would it be of any benefit to your company in supplying your commitments to Pillsbury at Astoria to use grain originating on the Milwaukee Railroad in Montana?

A. Yes, it definitely would.

Q. Will you state in what manner that would be of advantage to your company?

A. There are occasions when car supply is very bad, such as right at the moment. It has been for a month along the Great Northern high line.

Exam. Dishman: What do you mean by high line?

The Witness: That is a common term for the main line of the Great Northern across Montana.

By Mr. Merrill:

Q. Does that car shortage occur practically every year in your experience?

[fol. 1014] A. Yes, it does.

Q. And does that affect your ability to supply grain to your west coast customers, including Astoria, Oregon customers from origins on the Great Northern?

A. It certainly does.

Q. And then you feel that the ability to supply your customers at these destinations on the Pacific Coast including Astoria, Oregon, with grain originating on the Milwaukee Road in Montana would be of benefit to your company?

Mr. Rockwood: He hasn't testified with respect to these destinations but only as to Astoria, Oregon.

Mr. Merrill: I will confine it to Astoria.

The Witness: Would you read that question?

Mr. Merrill: Maybe I could ask it again and confine it to that point.

Mr. Rockwood: I object on the ground of being repetitious.

Mr. Merrill: I think it has been answered. That is all.

Cross examination.

By Mr. Rockwood:

Q. Mr. Behmer, what is manufactured at the mill of the Pillsbury Company at Astoria?

A. Well, I am not too familiar with their operation but to my understanding it is a flour mill.

Q. Where do they market their flour?

A. I also understand it is primarily export and for local disposition.

[fol. 1015] Q. Don't they ship back into the Willamette Valley on the Southern Pacific?

A. Perhaps.

Q. Don't they have a large market in California?

A. I am afraid I can't answer any of those questions because I don't know most what operations are.

Q. Then you don't know whether or not they move out flour milled in transit, and move out the finished flour on a through rate?

A. No, I do not.

Q. Would the availability of routes at the through rates on the finished product after manufacture have anything to do with the source from which Pillsbury might wish to purchase grain?

A. It probably would.

Q. So if the fact is that they have no transit on the finished product, no through rate on the product milled in transit to Southern Pacific destinations, that would deter Pillsbury in purchasing Milwaukee grain, would it not?

Mr. Maguire: I object to that question on the ground it is improper cross examination. The witness's questioning has been confined to the desirability of another source of grain on account of periodic car shortages on the Great Northern. There has been no testimony by this witness as to the outbound movement of any finished or processed product.

Mr. Rockwood: He has testified as to one fact and has concluded it would be desirable to have these rates to cor- [fol. 1016] rect that fact. I am trying to find out if there are other factors which would nullify any opinions he has expressed based on the matter of car supply.

Mr. Maguire: That is a matter, I would submit, that if there is any foundation for it should be covered by rebuttal because this witness has testified that he is not at all familiar with the operations of the Pillsbury Company at their Astoria plant, what they do with it. If that is the case, if counsel wishes to raise that point, he has very liberal time awarting him for the preparation of rebuttal testimony which would cover it and I don't think it is proper cross examination of this witness because he is merely asking him to speculate.

Exam. Dishman: We are getting a lot on the record about something that I doubt that the witness is familiar

with. You are not familiar with the subject matter about which Mr. Rockwood is questioning you now, are you?

The Witness: No, I am not.

Exam. Dishman: If that is so, he can't answer it.

By Mr. Rockwood:

Q. You are traffic manager for McCabe Brothers, Minneapolis, are you not?

A. Yes, sir.

Q. And you have wide familiarity with the matter of the factors which determine the source from which grain is purchased for delivery at a given destination, have you not?

A. Reasonably so, yes.

[fol. 1017] Q. And you know, do you not, that the availability of transit rates on a product milled in transit, of grain from a certain origin point will have a great deal to do with whether or not that origin is or is not used; you know that, don't you?

A. Yes.

Q. And you did not make any investigation to determine whether the matter of rates available on the outbound product in Astoria would have anything to do with whether or not Pillsbury would buy Montana grain off the Milwaukee rather than Montana grain from the Great Northern and Northern Pacific sources; you made no investigation of that whatsoever?

A. No.

Q. And you have no information on the subject as it relates to the Pillsbury mill at Astoria?

A. No, I haven't.

Q. And the basis for your testimony here today that the additional route via the Milwaukee would be desirable is that experience during a period when there is a car shortage on the Great Northern or Northern Pacific, there would be no car shortage on the Milwaukee; that is the only basis for your testimony?

Mr. Maguire: That is an argumentative question and I think counsel can draw his own conclusions in argument, rather than argue with the witness.

Mr. Rockwood: This man is testifying as an expert. He [fol. 1018] is explaining opinions as to whether something would be good or not. That is an opinion and I am entitled to—

Exam. Dishman: The question is whether there was a car shortage. Repeat the question.

(Question read.)

Exam. Dishman: You may answer.

A. I would certainly say that the car shortage conditions would have a great deal to do with it. We have at the present time commitments to several of the West Coast outlets and for a month now we have been unable to get anywhere near an adequate amount of empties to load our wheat in.

By Mr. Rockwood:

Q. What basis do you have for saying an additional route via the Milwaukee to Astoria would be desirable other than this matter of car supply?

A. We would like to have another territory opened up from which we could draw grain to merchandise.

Q. Would the relief the Milwaukee asks in this case actually open up an additional market in Astoria for you?

A. I believe it would.

Q. Would it open up an additional market if they could not move out their finished product at through rates under milling in transit privileges?

A. Unquestionably they operate there the same as we do in Minneapolis. If you don't have favorable tonnage you can always get rid of it, some of that through local disposition.

[fol. 1019] Q. How big a market is the local market of Astoria?

A. That I can't answer.

Q. Astoria isn't a very big city, is it?

A. I don't imagine it is.

Mr. Maguire: How big is big?

Mr. Rockwood: I think it is about 8,000 or 10,000. Is that about right?

Mr. Maguire: I don't think so. I don't know at the present time. I am unable to stipulate with you about it.

Exam. Dishman: And the witness doesn't know the size of the cities.

Mr. Maguire: It is smaller than Chicago; I will stipulate that.

The Witness: When I say local disposition, I don't mean within the confines of the town either. There is always a lot of local distribution through trucking to the surrounding territory.

By Mr. Rockwood:

Q. Would they buy Montana wheat,—would you as a buyer for that mill, buy Montana wheat purchased Milwaukee, for milling in transit in Astoria which could not be milled in transit back to Portland, Oregon on the balance or through rate, if you had an opportunity to buy wheat which could be milled in transit at Astoria and moved back to Portland on a through rate, wouldn't you use the route where you got the cheapest rate?

[fol. 1020] A. Certainly, that is right, if the wheat is available.

Q. And is there a car shortage on the Milwaukee right now?

A. I have had no complaints from any of our points. By our points I mean people in North and South Dakota and Minnesota who ship to us, as commission; we have no complaints on the Milwaukee.

Q. Do you have any information about car supply on the Milwaukee for the West at the present moment?

A. No, I don't.

Q. And I take if you know nothing about the rates applicable on the milled product from Astoria?

A. I stated that.

Q. And you know nothing as to the market which Pillsbury has for flour milled at Astoria?

A. Nothing, except I know—well, probably I shouldn't say I can't, but I have heard that a great portion of that moves for export in which event I don't think a transit move enters into it.

Q. You don't know whether that great portion is 20 percent or 90 percent?

A. No, but I have heard Astoria is a large exporting port. I was told that by our Spokane man.

Q. And I repeat, you don't know whether 10 percent moves off-shore or 90 percent moves off-shore?

A. No.

[fol. 1021] Mr. Rockwood: That is all.

By Mr. Torinus:

Q. I have one or two questions of this witness. Is your wheat sold on the Spokane market after inspection at Spokane? Is that the ordinary way wheat is disposed of?

A. That is right.

Q. What do you mean by commitments that you have at the present time? You don't have any commitments, do you, until the sale is made on a specific market, and there has been an inspection?

A. Oh, yes; sales are made in various lots, sometimes two cars, sometimes 100 cars or more or less. You agree to furnish the mill with a certain type of wheat.

Q. You sell the car before it is loaded and shipped into Spokane and inspected,—you sell a car that will meet certain specifications, is that right?

A. That is right.

Q. Does any of the wheat which you ship from the Dakotas and Minnesota go to Astoria?

A. No.

Q. All of your Astoria wheat, then, would move from Montana, your elevators in Montana?

A. That is right

Q. Is my understanding correct that all of your existing facilities in Montana, your elevators are located on the Great Northern and Northern Pacific?

A. That is right.

[fol. 1022] Q. You have no elevators on the Milwaukee?

A. No elevators.

Mr. Torinus: No further questions.

By Mr. Golden:

Q. Do I understand none of this 150 cars per year is Washington grain?

A. It is all Montana.

Q. Do you know whether or not the flour milled by Pillsbury at Astoria and exported, is soft or hard grain?

A. I am reasonably sure that most of our wheat we ship out there is spring wheat, but I am not a flour miller and I don't know soft and hard.

Q. You don't know what they do with the wheat that comes from Montana?

A. No.

Mr. Golden: That is all.

Redirect examination.

By Mr. Merrill:

Q. Where do you buy the grain which you furnish customers at North Pacific Coast destinations, and which originates at origins served by the Milwaukee Road in Montana? Do you buy it at Spokane or at the country station?

A. At Spokane.

Q. When you buy the grain there, is it already loaded into a car?

A. Yes.

Q. So when you buy the grain, do you automatically [fol. 1023] have the car that goes with it?

A. Yes.

Q. Is the wheat brought from the origins served by the Milwaukee Road in Montana comparable to the wheat which is raised along the Great Northern Railroad in Montana, comparable in quality?

A. Yes.

Q. And comparable in kind?

A. Yes.

Q. Could you state approximately how much wheat you furnish to the Pillsbury mill in Astoria in the course of a year, originating in Montana?

A. As I stated before, I would estimate it at 150 cars.

Q. A year?
A. Yes.

Mr. Merrill: Thank you, sir.
Exam. Dishman: The witness is excused.

(Witness excused.)

H. W. MENKE was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. State your name and occupation please.
A. H. W. Menke. I am traffic manager for the Burdick Grain Company, at Minneapolis.
Q. How long have you been traffic manager?
[fol. 1024] A. Since the inception of the company, some 4½ years ago.
Q. Will you state the business of Burdick Grain Company?
A. We are sub-terminal, terminal operators and also merchandise operators in grain.
Q. Do you specialize in any particular types of grain?
A. Yes, in the handling of barley of all types.
Q. Where do you obtain the barley which you handle?
A. We buy midwestern barley from the so-called midwest states, North and South Dakota, Minnesota, for storage at Minneapolis. We also this year have entered the west coast barley market. By that I mean west coast barley coming eastbound.
Q. That is, you now purchase west coast barley or western barley, and move it east, is that correct?
A. That is correct.
Q. Now, with respect to the midwest barley which you move west, do you move any of that barley to destinations served by the S. P. & S. or its subsidiaries?
A. Yes.
Q. And with respect to the western barley which you move east, do you obtain any of that barley from the ter-

ritory served by the S. P. & S. or any of its subsidiaries?

A. Yes.

Q. You have other sources of supply for such barley as well, do you not?

A. Yes.

[fol. 1025] Q. Principally where do you draw such barley?

A. We have drawn this year from Lewiston, Idaho, Craigmont, Idaho, Asotin, Washington, Genesee, I am not sure whether that is in Idaho or Washington.

Q. Are these stations located principally on the Northern Pacific Railroad?

A. Yes.

Q. Approximately how many cars have you brought east from origins on the S. P. & S. or its subsidiaries during the current year?

A. I would estimate about 10 or 15 cars have come from S. P. & S. origin stations.

Q. Do you know how such barley is routed?

A. Yes, sir, the barley we have purchased has been routed thru Spokane and into Minneapolis via the Northern Pacific.

Q. Do you know whether or not the town of Shakopee, Minnesota, is located on the Northern Pacific?

A. It is not located on the Northern Pacific.

Q. Have you had any inquiries during the past five years from persons at Shakopee for barley located on the S. P. & S. system?

A. Yes.

Q. And were you able to supply such barley to the customer in Shakopee, Minnesota for such S. P. & S. origins?

A. No.

[fol. 1026] Q. What was the reason you were not able to supply the barley that this man was interested in?

A. The barley this man was interested in was located at S. P. & S. origin stations and he desired to move that barley directly into Shakopee for malting purposes and transit into the Twin City market, which cannot be done under the existing tariffs as there is no joint route and rate via the Milwaukee at Spokane.

Q. Had you been able to supply this customer with

barley originating on the S. P. & S., would that have meant additional traffic to the S. P. & S. Railroad?

A. Yes.

Q. Have you had any difficulty in moving barley from the midwest and specifically from the Twin City area to points in the Pacific Northwest and specifically to points along the S. P. & S. system?

A. Yes.

Q. What has been the nature of that difficulty?

A. We have wanted empties from the Great Northern specifically to move cars to the West Coast, and were unable to obtain those empties causing a delay in our customers' orders.

Q. Is that a recent situation that you speak of, Mr. Menke?

A. It would be within the last six weeks, yes.

Q. Is that a recurrent problem you face in that regard too?

A. It is a recurrent problem in that there are many [fol. 1027] times when we are unable to secure Great Northern empties.

Q. What has been your experience with regard to obtaining cars on the Milwaukee Railroad at Minneapolis or the Twin City area?

A. In the four years we have operated the elevator we are now operating, we have never experienced any difficulty getting Milwaukee empties. They have been always available and very often on as little as three hours' notice.

Mr. Merrill: That is all.

Mr. Rockwood: May we defer the cross examination of Mr. Menke until after lunch?

Exam. Dishman: Will he be available?

Mr. Merrill: Mr. Menke has stated that he would like to take an early afternoon train back home. We would like to tender him for cross examination at this time if it can be done.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. We will recess for lunch until 1:30 o'clock.

(Whereupon, at 12:01 p.m., a recess was taken until 1:30 p.m. of the same day.)

[fol. 1028] AFTERNOON SESSION 1:30 p.m.

Exam. Dishman: The hearing will come to order, gentlemen. Are you ready for cross examination?

Mr. Rockwood: Mr. Torinus will cross examine.

Mr. Maguire: Before the cross examination starts there was a question in the testimony of Mr. Meyer as to what railroads serve Waterloo, Iowa, and at this time I think it might be appropriate and I have consulted with Mr. Rockwood about this point, to read into the record the fact that the Official Railroad Guide, that Waterloo is served by the Chicago, Great Western, Chicago, Rock Island & Pacific, the Illinois Central and the Waterloo, Cedar Falls and Northern Railroad, and I will add, this is not in the Guide, that they are all defendants in this case.

Mr. Musenbrock: While you are reading those in the record will you read those that serve Perry, Iowa and Newton, Iowa, on which Mr. Meyer was not clear?

Mr. Maguire: Yes, sir; I will be glad to do it. In the order shown in the Guide, Perry, Iowa is served by the Chicago, Milwaukee, St. Paul & Pacific, and by the Minneapolis and St. Louis Railway; and Newton, Iowa is served by the Chicago, Rock Island and Pacific.

Mr. Boe: With respect to Waterloo, there is no contention that the Milwaukee Railroad serves with its own rails Waterloo, Iowa.

[fol. 1029] Mr. Maguire: No; we don't contend that.

H. W. MENKE resumed his testimony as follows:

Cross examination.

By Mr. Torinus:

Q. Mr. Menke, does the T.M. Bu[illegible]ck Grain Company have an elevator at Minneapolis?

A. What was that name?

Q. The company for which you work?

A. Burdick Grain Company.

Q. The "T.M." stands for Traffic Manager; I misread my notes. Burdick Grain Company has an elevator at Minneapolis.

A. We operate an elevator in Minneapolis. We do not own one.

Q. You are also in the commission business, is that right?

A. No, sir.

Q. This barley that you spoke of, is that malting barley entirely?

A. We handle all types of barley.

Q. The barley that you ship as you testified from points on the S. P. & S. eastbound, is that malting barley?

A. We have made a practice of buying nothing but malting barley this year from the West Coast. The reason I say that: Occasionally a car will get into Minneapolis which has gone bad and consequently loses its malting potential.

Q. Those 10 or 15 cars you have brought east from S. P. & S. origin stations which you spoke of this morning, [fol. 1030] were they cars of malting barley?

A. Yes, sir.

Q. Is there a scarcity now of barley in that territory?

A. I am not familiar with the West Coast production figures; I can't answer that.

Q. Now, you testified that if these through routes and joint rates which the Milwaukee seeks in this complaint had been in effect, that would have meant additional traffic for the S. P. & S. and I wondered if that was on the assumption that the barley wouldn't move somewhere else if it hadn't moved eastbound to Shakopee, Minnesota; that was the assumption?

A. I don't know what happened to that particular barley that we desired to move in that manner because we did not enter into any transaction regarding it.

Q. You don't know where that barley went?

A. No, I do not.

Q. Now, from what origins did these 10 or 15 cars which you brought east during the current year, from what origins did they move?

A. I do not know.

Q. Where did you purchase those cars?

A. We purchased those cars in Spokane.

Q. You have said that they were all from S. P. & S. origins?

A. They were from S. P. & S. origins and had S. P. & S. routing into Spokane.

[fol. 1031] Q. You made no investigation to determine the particular origin?

A. No, sir; when we bought the cars, the cars were in Spokane and even if they had been common points it was already too late.

Q. These cars had moved into Spokane via the S. P. & S.?

A. Yes, sir, and had been inspected there and we bought it there.

Q. You don't know, of course, whether or not they originated in that territory south of Portland which is served by the S. P. & S. and the Southern Pacific, and there are a great many common points?

A. No, sir, I don't know.

Q. Is there a barley market also in Portland?

A. It is possible but I do not know for sure.

Q. As a matter of fact, the largest production of barley on the North Pacific Coast is in that territory south of Portland which is tributary to the Southern Pacific, isn't that correct?

A. As I stated before, I am not familiar with the production figures and in addition not familiar with the general territory; this is the first year we have entered into that market.

Q. Let me ask you this: Did you purchase any barley at Spokane that moved into Spokane via the Union Pacific? That is, during the current year?

A. I do not recall whether we did or not; it is possible.

Q. Can you tell me how many cars of barley during the current year you purchased at Spokane?

[fol. 1032] A. No, I can't give you the division. We have purchased approximately 150 cars, that is, up until the time I left Minneapolis we had moved or contracted to purchase around 150 cars of west coast barley, some of which would move from Lewiston, Idaho, some through Spokane.

Q. Now, that period that you speak of covering the 150 cars is the same period which you spoke of, the current year, when you purchased 10 or 15 S. P. & S. cars?

A. Yes, sir.

Q. Do you know whether any of the cars that you purchased at Spokane moved into Spokane on the Union Pacific?

A. No, I do not.

Q. Would you say that none did?

A. I do not know; it is possible.

Q. The only cars that you made any investigation of are these particular cars that moved in via the S. P. & S.?

A. Actually I did not make any special investigation; it was merely noted by myself in receiving my tonnage when the cars were unloaded at Minneapolis.

Q. How did you happen to make a particular investigation into the S. P. & S. thing?

A. As I said, I didn't make a particular investigation into those; it was just noted as I was filing my tonnage.

Q. To the extent that you purchased at Spokane any cars of malting barley that came into Spokane via the Union [fol. 1033] Pacific originating at points on the Union Pacific or Southern Pacific you would have routing, would you not, to the Twin Cities via the Milwaukee through Shakopee, Minnesota?

A. I cannot answer that; I don't know.

Q. You didn't check that?

A. No.

Q. This barley that moves into Shakopee, is that barley that terminates there?

A. There is none moving into Shakopee from the west coast, that I know of.

Q. This barley that you desire to move into Shakopee, or you spoke of Shakopee in some connection?

A. Yes.

Q. Would that be barley that terminated there?

A. No, that would be transferred on to the Twin Cities.

Q. Don't you know that from Southern Pacific origin points and Union Pacific origin points you now have routes via Union Pacific, Spokane and Marengo, Milwaukee through Shakopee thence to the Twin Cities?

A. Did you say from S. P. & S. points, or are you speaking of common points.

Q. No, I am speaking of Southern Pacific points and Union Pacific points, and that would necessarily include points which are common on the S. P. & S.?

A. I misunderstood your question; I was not aware of it, no.

[fol. 1034] Q. If you had been aware of it, would you be here today?

A. Yes.

Q. Did you discuss this case with the Milwaukee before coming from Minneapolis down here?

A. Yes, sir.

Q. And it is at their request that you are here?

A. Yes.

Q. When did this Shakopee situation which I just cited in your testimony first come to your attention?

A. As I stated at the time, about 5 or 6 years ago; I am not sure of the exact year.

Q. It came to your attention five or six years ago and you haven't yet investigated whether or not there are routes on barley from Southern Pacific and Union Pacific points via Marengo and Milwaukee to the Twin Cities.

Mr. Maguire: I object; that is pure argument. Counsel can argue that in the brief. Cross examination for eliciting of facts is all right but not for the purpose of arguing with the witness.

Exam. Dishman: Do you press the question?

Mr. Torinus: I will withdraw the question; I think it is obvious, in any event.

By Mr. Torinus:

Q. Are there maltsters at the Twin Cities and other points to which you ship barley?

A. Yes, sir.

[fol. 1035] Q. East of the Twin Cities?

A. Yes, sir, in Western Trunk Line Territory.

Q. East of the Twin Cities, the rates on west coast barley apply—put it this way, are the same, whether the barley moves from—

Mr. Torinus: Strike that question, Mr. Reporter.

By Mr. Torinus:

Q. If there are any maltsters on the Milwaukee east of the Twin Cities, the rates on West Coast barley would apply to those malting points from all S. P. & S. stations, Great Northern or Northern Pacific, to the Twin Cities, Milwaukee and beyond? Is that correct?

A. Yes, that is correct.

Q. Now, this barley you shipped westbound, how many cars did you ship westbound since the first of the year?

A. I would estimate about 25 cars.

Q. And those were from points in Minnesota and the Dakotas?

A. That was barley that was brought into Minneapolis and put in stock and graded and sized in accordance with the customer's specification and reshipped from Minneapolis.

Q. Shipped out of your elevator?

A. Shipped out of the elevator, yes, sir.

Q. Was that malting barley also?

A. Yes, sir.

Q. To what points did you ship that?

A. That was shipped to Vancouver, Washington.

[fol. 1036] Q. Vancouver is a common point which is reached by the Union Pacific as well as by the S. P. & S., is it not?

A. Yes.

Q. It is also reached by the Great Northern and Northern Pacific?

A. Yes.

Q. You have routes from Minneapolis to Vancouver, Washington, which apply: Milwaukee, Marengo or Spokane, thence Union Pacific to Vancouver?

A. Yes.

Q. You also have routes to Vancouver, Washington going down to Omaha, through Twin Cities from Omaha, like the Northwest on the Milwaukee thence Union Pacific to Vancouver?

A. Yes.

Q. That is the only S. P. & S. point to which you shipped during the current year?

A. Yes.

Mr. Torinus: I have no further questions.

By Mr. Golden:

Q. How long have you been traffic manager of the Burdick Grain Company?

A. Since its inception about 4½ years ago.

Q. And it was about 5 years ago that that situation came to your attention that you couldn't move it—

A. That is correct. I was working at the same time for the same man who is the owner and president of Burdick [fol. 1037] Grain Company, in another capacity.

Q. Did you or any one else for that company at that time make any request for rates?

A. No.

Q. You didn't consider them of sufficient importance to bring to the attention of the railroads involved?

A. No.

Q. And you have not since that time called that to the attention of any of the officials or any of the railroads involved?

A. No.

Q. Isn't it a fact, Mr. Menke, that a considerable quantity of barley for malting purposes is shipped from the Twin City area to the west coast for malting purposes?

A. Yes, it is.

Mr. Golden: That is all.

By Mr. Hillman:

Q. Have you stated previously how many cars have moved from the S. P. & S. territory into the Minneapolis Twin Cities territory?

A. Yes, I have estimated we have received about 10 or 15.

Q. And that has all been within the past year?

A. Since the west coast barley crop has been harvested this last fall.

Q. Could you state who the consignees of these carloads of barley are?

A. The Burdick Grain Company in all cases.

[fol. 1038] Q. Do you know whether any of this barley moving into Minneapolis from S. P. & S. points is subject to transit privileges to points east of Minnesota Transfer?

A. Yes, it is.

Q. Would you know to whom the barley moved under transit is ultimately consigned or what the destinations are east of Minnesota Transfer?

A. Yes, that which is moved; I know some we have in storage hasn't moved and consequently is still there.

Q. Can you state what railroads serve any of the points which are to your knowledge ultimate destinations east of Minnesota Transfer,—the Rock Island, the Northwestern, the Burlington?

A. Yes; some of it has moved right here to Chicago which would involve all of the Minneapolis-Chicago lines being eligible for the haul. Some of it has moved to Cannon Falls, Minnesota, which would involve the Milwaukee and Great Western.

Q. Are there any points you know of that are served by the Northwestern, specifically?

A. Not that I know of, at this moment.

Q. Do you know whether the transit tariff in this situation—

Mr. Maguire: Mr. Hillman, I suppose with that question you meant other than Chicago, which the witness has already testified to.

Mr. Hillman: Otner than Chicago.

Mr. Maguire: Thank you.

[fol. 1039] By Mr. Hillman (continued):

Q. Do you know whether the transit tariff is so constructed so that the transit operator gains any particular advantage by building up outgoing tonnage with the same carrier or carriers who participate in the through route under which the transit privilege is granted?

A. Are you speaking of the transit at Minneapolis?

Q. That is correct.

A. Well, on the west coast barley tonnage under the recent change in the rates, the movement out of Minneapolis is based WTL rate from Minneapolis and not the transcontinental rate. Consequently, you are not involving a single line transit.

Q. Is it your point that in so far as the building up of outgoing tonnage credits is concerned, is it completely immaterial to the operator as to which carrier holds the outgoing movement?

A. From a tariff standpoint it is virtually immaterial on the west coast barley moving east other than the request of the customer.

Mr. Hillman: That is all I have.

Exam. Dishman: Does that complete the cross examination?

Mr. James: I believe it does.

Exam. Dishman: All right; proceed with redirect.

Redirect examination.

By Mr. Merrill:

Q. Was the Shakopee customer interested in barley originating on the Union Pacific or Southern Pacific or [fol. 1040] barley originating on the S. P. & S.?

Mr. Torinus: I object to that; there is no foundation laid.

Mr. Merrill: There has been foundation for it this morning.

Mr. Torinus: It is purely hearsay as to what some undisclosed customer may be interested in. We do not know whether he expressed his interest, at what time, and to whom.

Mr. Merrill: It was not hearsay when, on cross examination, Mr. Torinus cross examined on the same subject.

Exam. Dishman: Read the question.

(Question read.)

Exam. Dishman: Can you state what the customer was interested in?

Mr. Torinus: I have the same objection.

Exam. Dishman: I think the record should show if the witness knows of his own knowledge.

Q. The request as made to me was specifically about S. P. & S. points.

By Mr. Merrill:

Q. Now, the customer at Vancouver to whom you furnish midwest barley, does he specify delivery of barley by any particular railroad?

A. Yes, he does.

Q. What tonnage does he specify you must have?

A. He specifies S. P. & S. routing at Spokane.

Q. You are unable to use the Union Pacific?

A. Under the terms of the contract we are unable to use [fol. 1041] any other route.

Q. Have you any other reason, if the relief sought in the complaint in this proceeding were to be granted, to change the routing of your tonnage eastbound from the Twin City area, east or southbound?

A. That is a very difficult question to answer in that it would involve the needs of our customers. If our customers needed it, we would do so.

Q. The fact that you would have an additional route available to you from Spokane to the Twin Cities would not have any effect upon the routing of your tonnage to the Twin Cities?

A. No.

Mr. Rockwood: That is slightly leading.

Mr. Merrill: It is slightly leading, but to save time.

Mr. Torinus: To save time Mr. Merrill could testify about it.

Mr. Merrill: That is all the questions I have.

Exam. Dishman: Any more questions of this witness?

Recross examination.

By Mr. Rockwood:

Q. You say your customer in Shakopee specified an S. P. & S. origin?

A. No, the customer at Vancouver specified S. P. & S.—you mean in the original request.

Q. On Shakopee shipments?

A. He specified S. P. & S. territory.

[fol. 1042] Q. Did he name the stations?

A. No, he said there was a group of stations on the S. P. & S.

Q. Where was this customer's office?

A. Across the hall from ours, in Minneapolis.

Q. And he was representing the maltsters at Shakopee?

A. Yes.

Q. And he asked you to get some S. P. & S. grain and you found you couldn't do it?

A. That is correct.

Q. That is the sum and substance of it?

A. Yes.

Q. If he had asked you for some Southern Pacific origin you could have filled the order, couldn't you?

A. I don't recall the condition of the crop that year. That would have a great deal of bearing upon whether it could have been filled or not. If the barley was there, yes.

Q. The barley in Oregon is grown in the Willamette valley, is it not?

A. I am not familiar with the territory.

Q. And the Willamette valley is served by both the Southern Pacific and Oregon Electric, is it not?

A. I don't know.

Q. You wouldn't know whether there was any difference in the quality of the barley grown in one field or another?

A. No, I am not a barley expert.

[fol. 1043] Q. In sum and substance, if you asked for some barley from an S. P. & S. source to Shakopee you couldn't fill the order, but you could have some from another source?

A. No, he wanted it from an S. P. & S. source; I don't know why.

Q. You don't know whether he could have filled it from some other source?

A. I don't know.

Q. You don't know whether he could have filled it from Southern Pacific?

A. I don't know.

Mr. Maguire: He said he did not know.

Exam. Dishman: He said he didn't know.

By Mr. Rockwood:

Q. Do you know there is no barley produced in S. P. & S. territory proper, along the line of S. P. & S., eliminating the Oregon Electric and Oregon Trunk?

A. No, sir.

Mr. Rockwood: I guess that is all.

By Mr. Torinus:

Q. I have a couple questions about this westbound barley that went to Vancouver; you say this customer in Vancouver specified S. P. & S. delivered Vancouver?

A. Yes.

Q. When was that contract made?

A. I am not sure of the date; I would say within the last four or five months.

[fol. 1044] Q. When you use the term contract, do you refer to a written instrument?

A. Yes.

Q. Do you have it with you?

A. No.

Q. Did your customer at Vancouver who specified S. P. & S. delivery into Vancouver, indicate the ultimate destination of that barley?

A. No, sir.

Q. He didn't indicate whether he wanted to ship it beyond Vancouver—

Mr. Maguire: Just a moment. The witness said he didn't indicate. Now, Mr. Torinus is beating that question to death by asking him to answer about things he says he doesn't know about.

Mr. Torinus: Would you let me finish my question before you interpose your objection?

Mr. Maguire: I don't think it is necessary to let you finish.

Exam. Dishman: Proceed.

By Mr. Torinus:

Q. Did the customer at Vancouver indicate to you whether or not he desired to dispose of the barley that he wanted delivered to Vancouver on the S. P. & S. at S. P. & S. destinations or destinations on some other railroad beyond?

Mr. Maguire: Just a moment. I object to that because [fol. 1045] he said he didn't know.

Exam. Dishman: You said you didn't know?

The Witness: He did not specify.

Mr. Torinus: I have no further questions.

By Mr. Hillman:

Q. Mr. Menke, can you state whether you know what lines serve Shakopee?

A. Yes, the Milwaukee Railroad and the Chicago and North Western system; I am not sure whether it is the Omaha or the North Western Line.

Q. Would you accept my statement that is the Omaha line?

A. Yes.

Q. Is it correct that Shakopee is not served by the Great Northern or Northern Pacific?

A. That is correct.

Q. Is Shakopee, to your knowledge, connected by rail via the Omaha Line, with Minneapolis?

A. Yes, it is.

Mr. Hillman: That is all.

By Mr. Musenbrock:

Q. Following up that statement, if relief is accorded to the Milwaukee with transit at Shakopee, you may as well leave the Omaha out of that S. P. & S. business in Shakopee, isn't that a fair statement?

A. No.

Q. What would the Omaha have to do to retain the Shakopee malting business?

[fol. 1046] A. I don't think they would have to do anything to retain it.

Q. Wouldn't they have to put transit in at Shakopee?

A. From where to where?

Q. Well, they connect with the Great Northern and Northern Pacific at Minneapolis?

A. Yes.

Q. And then they run to Shakopee, about 20 miles?

A. Yes.

Q. Wouldn't they have to put in transit at the Shakopee maltsters in order to compete with the Milwaukee single line haul from Spokane?

A. Going where? There is no destination given.

Mr. Merrill: May I ask one question for clarification? Are you speaking of grain originating on the S. P. & S. which winds up at Shakopee?

Mr. Musenbrock: I am speaking of grain which you asked the witness whether the buyer designated S. P. & S. grain and we also heard the witness testify that grain would not have its ultimate destination at Shakopee; it would be transit grain at Shakopee. Obviously it would have a further movement.

Mr. Merrill: Your grain is that which originates at S. P. & S. origins and goes to Shakopee?

Mr. Musenbrock: Yes.

Mr. Merrill: You understand that grain never moved?

Mr. Musenbrock: Yes, but I understand this company [fol. 1047] wants to buy grain that will move that way, that they have been out of the market.

Mr. Merrill: All right, fine.

A. (continued) To answer your question, the move as you described it would come into Minneapolis on the Great Northern or Northern Pacific and go to Shakopee on the Omaha.

By Mr. Musenbrock:

Q. Or the Milwaukee?

A. Yes. That is the objectionable part of the present arrangement because if they want to transit that grain to Minneapolis it is by moving it to Minneapolis on the Great Northern or the Northern Pacific and then to Shako-

pee and back again and that would involve a back haul and as a matter of fact I know that Shakopee has a back haul transit item on both the Milwaukee and the North Western.

Q. The Milwaukee doesn't have to move grain through the Twin Cities terminals from Spokane to get to Shakopee, do they?

A. No.

Q. They can move it through Cologne?

A. That is right.

Q. If this relief is accorded to the Milwaukee they can haul this grain single line from Spokane to Shakopee and transfer at Shakopee?

A. Yes, to Minneapolis.

Q. Can the Omaha do likewise?

A. I do not know. They could not do it on the same [fol. 1048] competitive basis when they receive it from the Great Northern or Northern Pacific in Minneapolis.

Q. That is the only place they would get it, would be at the Twin Cities,—the Omaha?

A. They could not do it.

Q. They could not do it?

A. No, not and be competitive with the Milwaukee.

Mr. Merrill: This would offer you a new service which you do not now have?

The Witness: That is right.

Exam. Dishman: You are excused.

(Witness excused.)

R. D. Waller was sworn and testified as follows:

Direct examination.

By Mr. Merrill:

Q. State your name and occupation.

A. R. D. Waller; Traffic Manager for Farley Loetscher Manufacturing Company, Dubuque, Iowa, who have branches at Sioux Falls, South Dakota; Des Moines, Iowa, and Chicago, Illinois.

Exam. Dishman: Where are the branches located? Repeat them, please.

The Witness: Sioux Falls, South Dakota; Des Moines, Iowa; Chicago, Illinois.

By Mr. Merrill:

Q. How long have you been connected with this company?

[fol. 1049] A. Over forty years.

Q. How long have you served it as traffic manager?

A. Most of that time.

Q. What is the nature of the business of your company?

A. They manufacture building woodwork, sash doors, blinds, KD frames.

Q. KD is an abbreviation for knocked down?

A. That is right.

Q. In those operations what lumber materials do you use?

A. Primarily Ponderosa pine.

Q. From what area of the country do you draw the lumber which you use in those operations?

A. From the Pacific Coast, primarily; Oregon; some from California, and some from Washington and Idaho, a little from Montana.

Q. What is the approximate volume of the lumber which you bring into Dubuque in the course of a year?

A. It runs over 1000 cars. In some years, in normal years, considerably over.

Q. Do you obtain any of your lumber at origins served by S. P. & S. or the Trunk Line railroads?

A. Yes.

Q. Name them?

A. Klickitat, Washington is one; Bend, Oregon; Prineville Junction, Oregon.

[fol. 1050] Q. Is that last origin located on the S. P. & S. or Oregon Trunk?

A. Yes, the junction point is.

Q. The last-named?

A. Yes.

Q. Now, is it true that you presently have routes avail-

able to you from S. P. & S. and Oregon Trunk origins utilizing the Great Northern or the Northern Pacific Railroad from Spokane to the Minnesota Transfer?

A. Yes.

Q. And thence Milwaukee, the Burlington or the M. & St. L. or the Rock Island, to Dubuque?

A. Not the Rock Island,—the Chicago and Great Western.

Q. You have those four lines available to you from the Minnesota Transfer to Dubuque, is that correct?

A. Yes.

Q. Do you also have a route available—

Mr. Rockwood: Please let the witness tell what routes he has.

Exam. Dishman: State what routes you have available.

A. The ones I just mentioned and then also the Union Pacific and we also have routes,—Oregon Trunk; S. P. & S., Spokane, C. M. & St. Paul and Union Pacific from some points, via Marengo; the Milwaukee from Marengo to Dubuque.

Q. Your Union Pacific route, is there a route available [fol. 1051] to you via Omaha?

A. No.

Q. Do you have such a route available to you?

A. Yes.

Q. Could you state which of those routes you presently use?

A. We primarily use the Great Northern and the Northern Pacific from Spokane to the Twin Cities and then the four carriers that you mentioned down to Dubuque, from the Twin Cities.

Q. Do you ever use the route embracing the Milwaukee Railroad from Spokane east?

A. Very seldom.

Q. Why do you not use that route?

A. Because we are restricted to the destination territory in our transit arrangement at Dubuque.

Q. And do you use the route of the Union Pacific to Marengo thence to Milwaukee to destination?

A. No, for the same reason that we are restricted on our

eastbound movement to points in the eastern territory which we are compelled to route under the restriction in the tariff by a cross-lake route which is somewhat of a handicap in delaying shipment and then we are restricted to points north of the Ohio River.

Q. Should the relief which the Milwaukee Railroad asks for in this case be granted, would you utilize the route of the Milwaukee Railroad from Spokane eastward?

[fol. 1052] A. Yes.

Q. Then you allot a portion of the traffic to the Milwaukee from that point?

A. Yes.

Q. Would you have any intention or changing the routing of any of your traffic from that portion of the route from Minnesota Transfer to Dubuque?

A. No.

Q. Do you feel there would be any advantage to you and to the operations of your company were this route available to you that the Milwaukee seeks to open in this case?

A. Yes, we would have another available route and we wouldn't have a restricted transit on the outbound to destination territory; it would be easier for you to trace cars whenever that is necessary because of our contacts with the Milwaukee Division freight agent office at Dubuque.

Q. When the car is now moved on the Northern Pacific or Great Northern, and you wish to obtain immediate information as to your whereabouts, what procedure do you follow?

A. We use the long distance telephone and call their Chicago office, sometimes their St. Paul office.

Q. If the car is on the Milwaukee Railway and you wish to obtain information as to its whereabouts, what procedure do you follow?

A. We just call locally the division freight agent at [fol. 1053] Dubuque, Iowa.

Q. And that same thing would be true if the car were on one of the other three lines operating into Dubuque from the Minnesota Transfer, would you contact their local agent?

A. No, because as a general rule—I shouldn't say no; sometimes we do. But as a general rule if we want quick

information we use the long distance telephone either to Chicago or St. Paul.

Q. During the some 40 years you have been with your company what has been your experience with respect to car shortages, in so far as it affects the movement of lumber from S. P. & S. territory?

A. We have had shortages over periods of years, many years back, depending on, of course, economic conditions, the sale of your product; therefore, if you have large sales you have more lumber to buy and we have run into car shortages out there where we were handicapped in not having lumber available for our manufacturing. The last two years, of course, we haven't had that trouble—

Exam. Dishman: How did you meet that situation?

The Witness: Well, in some cases I would ask the Union Pacific to send empty box cars westbound; I would ask the Great Northern to do that; and the Northern Pacific, and in those cases, of course, I would telephone them over long distance and in a number of instances they sent empty trainloads up into the lumber district, not only because of [fol. 1054] my requests but because of similar requests from other sources.

Exam. Dishman: All right; proceed, Mr. Merrill.

By Mr. Merrill:

Q. Do you see any possible advantage in solving the car shortage problem were the Milwaukee Railroad to participate in the long haul of this traffic from Spokane?

Mr. James: That indicates there exists now a car shortage problem. The witness said he had no such problem for two years.

Mr. Merrill: Let me rephrase the question: In the event of such car shortage?

A. Yes, there would be another available railroad to furnish box car equipment, empties, to the S. P. & S. at Spokane.

Q. And in your experience has the car shortage problem been a recurrent one?

A. Yes, it has been over these many years.

Cross examination.

By Mr. Rockwood:

Q. Has it been your experience when there is a car shortage on the northern lines during this period there is also a car shortage on the Union Pacific?

A. Yes.

Q. They come at the same time?

A. Yes.

Q. And there is also a car shortage on the Milwaukee, isn't there?

A. Our experience, as far as empty cars at Dubuque are concerned, we haven't run into that shortage on the Milwaukee.

[fol. 1055] Q. For outbound movement?

A. Yes.

Q. What about the supplies in the Pacific Northwest on the Milwaukee; doesn't that apply equally?

A. That wouldn't affect us because we wouldn't be purchasing lumber from points on the Milwaukee from the Northwest.

Q. Wouldn't you expect if in the Northwest there are car shortages on the Northern Pacific and Great Northern lines, there would be a car shortage on the Milwaukee?

A. There might be, but I wouldn't know.

Q. You have no basis of saying the participation of the Milwaukee in these through routes would take care of the car shortage?

A. Yes, I have, because it would give another line to work on to get empties, just as I do on the Great Northern and the Northern Pacific.

Q. And that other line would have its shippers working on it to use up its available car shortages if there were shortages?

A. Yes, if there were shortages on the Milwaukee, yes.

Q. So there would be another group coming in competing with you for cars which you think you might get from the Milwaukee?

A. Yes.

Q. You have no basis for saying you would have any better luck in getting cars from the Milwaukee?

A. Except their supplying cars in Western Trunk Line territory.

[fol. 1056] Q. But you know nothing about the condition of their car supplies nor the condition of the cars out on the line?

A. No, I don't.

Q. You purchase Ponderosa pine?

A. Yes.

Q. Ponderosa pine is produced in northern California?

A. Yes.

Q. And in the Bend, Oregon region, in eastern Oregon?

A. At Burns, in eastern Oregon.

Q. And Klamath Falls, Oregon?

A. Yes.

Q. They produce Ponderosa pine?

A. Yes.

Q. Served by the Great Northern and Northern Pacific, —I mean Southern Pacific; Prineville is just a little north of Bend, Oregon?

A. Yes.

Q. And that is a Ponderosa pine territory?

A. Yes.

Q. And the Shevlin-Hixon Company at Bend produce Ponderosa pine?

A. They have sold out.

Q. What is it now, Brooks-Scanlon?

A. Yes.

Q. There is no mill at Prineville Junction, is there?

A. No, but there has been loading there.

[fol. 1057] Q. The Ponderosa pine you get from Prineville Junction you get from Prineville which is on the Prineville Railroad, isn't that true?

A. Yes, we do get lumber from Prineville.

Q. In Klickitat, that is the J. Niels Lumber Company?

A. Yes.

Q. Do you buy from J. Niels?

A. Yes.

Q. Do you buy Ponderosa pine in Idaho?

A. Yes.

Q. What points?

A. Winchester.

Q. When you name these points, tell what railroads they are on.

A. I want to be sure of those because some of them have short lines out there and I didn't jot them down. From Craig, Idaho.

Q. Do you know what railroad?

A. Union Pacific. Lewiston, Idaho.

Q. What railroad?

A. Union Pacific. Winchester, Idaho, the same. And Hangeville, Northern Pacific and Boise, Idaho, Union Pacific.

Q. That is Union Pacific?

A. Yes; that is all in that territory.

Q. Of all the sources you have named there is only one served solely by the S. P. & S. and that is Klickitat?

A. Yes, solely.

[fol. 1058] Q. For instance, Bend, Oregon, they are served by Union Pacific and Oregon Transfer; Prineville Junction is served both by Union Pacific and Oregon Trunk?

A. Yes.

Q. So your only source served solely by the S. P. & S. is Klickitat?

A. Yes, local to the S. P. & S.

Q. Yes, served only by the S. P. & S.?

A. Yes.

Q. If a car were rolling via the S. P. & S., do you think the Milwaukee could trace them faster than the Great Northern and the Northern Pacific?

A. Not as economically as Great Northern and Northern Pacific; it is additional expense.

Q. And if you asked the Milwaukee to trace the car if it was south of Minnesota Transfer and they traced it, they would stand the expense of getting into touch with the northern lines and trace?

A. You don't get as quick action no matter whether you use any of the routes, the M. & St. L., the C. B. & Q., so far as tracing is concerned.

Q. All of those railroads which serve Dubuque would do a good job tracing a car?

A. If it is on their lines they would do a better job. It is easier to pin down one line than two or three lines.

[fol. 1059] Q. They would take an hour and the other fellow would take two or three hours?

A. No, the other one would take 24 hours before you get anything on them.

Q. Could you get information within an hour on a car, on the Milwaukee?

A. Sometimes, yes.

Q. Wouldn't the Burlington give you pretty good service?

A. If it is on their rails, yes, very good.

Q. If it were routed over the Burlington from an S. P. & S. point, they would give you service and trace for you?

A. There is always that slack, in between, between one company and another.

Q. Couldn't you get daily traffic reports if you asked for them from the northern lines?

A. Yes, but those are 48 hours or longer.

Q. But it gives you a pretty good notation where the car is; how long do you think it would take the Milwaukee to locate a car on the S. P. & S.?

A. I don't think near as long as it would going over two other lines. In other words, you have three lines involved with other lines.

Q. So far as car tracing is concerned, isn't the Great Northern the equivalent of a single line with the S. P. & S., for the tracing of cars?

[fol. 1060] A. Well, I don't think so but I am not entirely familiar as to how they trace with the S. P. & S.

Q. Don't the railroads accept calls collect, long distance, for tracing calls?

A. They might; I don't know. I never used it much.

Q. You never have availed yourself of that, if they have that service?

A. No; if I am going to give them five or ten cars, I figure they can pay the telephone call, to call them.

Q. They are probably delighted to?

A. Otherwise I don't; if I am seeking information I pay the telephone calls.

Mr. Rockwood: That is all that I have.

Exam. Dishman: Any more questions on cross examination?

By Mr. Hillman:

Q. Do you make any shipments from your plant in Chicago to points on the S. P. & S.?

A. No.

Q. Do you receive any shipments at your plant in Chicago from points on the S. P. & S.?

A. I am not as familiar with that as I should be, in order to answer the question.

Q. You don't know?

A. No.

Q. I assume from your testimony, though, that you do either make or receive such shipments at or from your [fol. 1061] plants at Dubuque or Sioux Falls plant?

A. Yes, we receive cars of lumber at those plants from the S. P. & S. points and, come to think about it, I also know of cars that come in to the Chicago branch.

Q. You now know of cars which have come in to Chicago from S. P. & S. points?

A. Yes.

Q. Do you know what carriers serving the territory east of Minnesota Transfer and Chicago might have participated in those movements?

A. No, not offhand. I would have checked into it if I thought I would be asked that question. I see the bills of lading on these but I don't pay much attention to them.

Q. Do you think it is probable that most, if not all, of the carriers operating between the Twin City area and Chicago have participated in those shipments, at least those carriers which presently are parties to through routes and joint rates in S. P. & S. territory?

A. Yes, but I think that the C. B. & Q. would get the major portion of that business because our plant in Chicago is located on the C. B. & Q.

Q. Are your plants at Dubuque, Sioux Falls and Des Moines served by the Chicago and North Western, to your knowledge?

A. The plant at Des Moines is served by a switch line

and, of course, all the roads which run into Des Moines [fol. 1062] switch to that carrier and in that way delays are made to our plant there, at Sioux Falls the Great Northern serves that plant of ours and they get the majority of the business because of that.

Q. Did you state that the switching track at Des Moines was owned or operated by the Northwestern?

A. No, I said there is a switch line there.

Q. Do you know whether the North Western is a participating carrier in any through routes and joint rates on shipments coming into your Des Moines plant?

A. I haven't had occasion to check it but I assume they are similar to the other carriers at the same rates.

Q. And Des Moines is served also by the Chicago, Milwaukee?

A. Yes.

Q. Do you know if those shipments come via the Minnesota Transfer or if they come through Omaha?

A. Both gateways are used,—via Des Moines and via Dubuque.

Q. Do you know whether the Milwaukee Road at the present time participates in any through routes and joint rates on shipments coming into your Des Moines plant?

A. Yes, sure.

Q. From points on the S. P. & S.?

A. Yes, by the Minnesota Transfer.

Mr. Hillman: Off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 1063] Exam. Dishman: On the record.

Mr. Hillman: I have no further questions.

By Mr. Boe:

Q. I was interested in your statement as to the Des Moines traffic and as I understand it, your present method in handling business from the Pacific Northwest to Des Moines is through two gateways?

A. Yes.

Q. Through Omaha?

A. Yes.

Q. And what railroads from Omaha to Des Moines presently share in that traffic?

A. The cars that I have noticed move in there Rock Island.

Q. But is it not a fact that the Milwaukee and the North Western have runs between Omaha and Des Moines and form direct connections with the Northern Pacific at Council Bluffs or Omaha and do have rates and routes through the Omaha gateway to Des Moines?

A. I have never checked on the North Western on that; the Rock Island have and the Milwaukee have.

Q. What about the Burlington from Omaha to Des Moines?

A. Yes, they have.

Q. You have presently an open route which includes the Milwaukee Road through the Omaha Gateway to Des Moines?

A. Yes, but it short hauls them.

Q. It short hauls them?

[fol. 1064] A. Yes.

Q. Does it short haul the Rock Island?

Mr. Maguire: I believe the answer was that it was a short haul route.

Mr. Boe: I thought he said it was a short haul.

By Mr. Boe (continued):

Q. What did you say, Mr. Waller?

A. I really said what you thought. It is a shorter haul than they would have either from Minnesota Transfer or from Spokane.

Mr. Boe: That is satisfactory to me.

By Mr. Golden:

Q. Mr. Waller, if you were moving a car eastbound from Spokane over the Milwaukee would you normally take that to destination on the Milwaukee, if the Milwaukee served the destination point?

A. We could to some of the points on the Milwaukee but the majority of our outbound shipments would be to connecting line carriers into the Chicago area; that is, Chicago and east and, of course, south.

Q. Take Chicago, for example; would you bring it all the way to Chicago via the Milwaukee?

A. Not on the long haul, we couldn't, because the rates are restricted.

Q. I mean, if you had the rates?

A. Yes.

Q. Would you normally do that?

A. Not 100 percent.

[fol. 1065] By Mr. Torinus:

Q. I have just one question before redirect. Mr. Waller, did you or your company ever request any railroad rate bureau for these through routes and joint rates which the Milwaukee is seeking in this case?

A. No, nor did we ever file a complaint for them with the Interstate Commerce Commission.

Q. And did you make any request with any railroad officials for any through routes and joint rates?

Mr. Maguire: Pardon me; the second preceding question was whether they ever made any request. Now counsel wishes to polish that off, if you made any request on any railroad official. If you made no request you made none on anybody.

I object, on the ground that it is repetitive cross examination.

Mr. Torinus: It is not repetitive. First I asked if he made a request of a rate bureau, and the next question, to which I haven't an answer, is whether he made a request to a railroad official.

The Witness: No, I have not.

By Mr. Torinus:

Q. Are you here, Mr. Waller, at the solicitation of the Milwaukee Railroad?

A. I am.

Mr. Torinus: No further questions.

By Mr. Musenbrock:

Q. I have a few questions to ask you because up to now Des Moines was not brought out in the cross examination [fol. 1066] and redirect examination but such examination was restricted to Dubuque. The M. & St. L. participates in Des Moines business out of the Twin Cities, does it not?

A. Very little. So far as Boyd is concerned, they don't have nearly the business we have. It is minor compared with Dubuque, Iowa.

Q. But your branch at Des Moines does have some of this North Coast business?

A. Yes, but comparatively little.

Q. What I judged from your examination and answers to these other gentlemen is your preference as to single line hauls over dual hauls?

A. Yes.

Q. So that in all probability if the Milwaukee is successful on their joint routes and rates from Spokane, you would use the Milwaukee on the Des Moines business through the Twin City Gateway or Aberdeen, whichever they wanted to haul?

A. Yes, but we wouldn't exclude other roads.

Q. Do you think at the present time you would exclude any other roads?

A. No, not any more than we would exclude them at Dubuque.

Mr. Torinus.

Redirect examination.

By Mr. Maguire:

Q. I have a couple questions, with the Examiner's leave, on redirect. As I understand it, when you want to trace a [fol. 1067] car moving from S. P. & S. origins over the Great Northern or Northern Pacific, even those lines are not the delivering company, your company would telephone long distance to St. Paul to trace that car?

A. That is right.

Q. Or to Chicago?

A. Yes.

Q. And in the same manner, if a car were moving, if certain lines were available, and a car were moving from Spokane via the Milwaukee, either to Minnesota Transfer or perhaps down through another route, that regardless of whether the delivering carrier shown on the billing was the Milwaukee or not, would you call the Milwaukee to trace that car, the same as you would the Northern Pacific and the Great Northern?

A. No, we haven't. I don't know why.

Q. Let us say, for example, if a car is moving from somewhere between Spokane and Minnesota Transfer, off the S. P. & S., and the Milwaukee would have the haul, and, let us say one of the other Western Trunk Line Carriers would be hauling it down from the Twin Cities to Dubuque or to Chicago, would you hesitate at all about calling the local agent of the Milwaukee and asking him to trace that car?

A. No.

Q. So then your tracing problems or your tracing situation, as I gather, would that be the same regardless of [fol. 1068] whether the Milwaukee has the haul down from the eastern junction or eastern gateway to your plants, that you would still call the Milwaukee if it had the long haul between Spokane and the Twin Cities?

A. Yes.

Q. And with that in mind and with that situation existing, would there be any particular reason why you would change the present balance of the routing from the Twin Cities to your plants, the distribution of that routing between the various Western Trunk Line carriers, including the Milwaukee?

A. With this exception, instead of giving the Milwaukee a short haul from the Twin Cities, we would give them a long haul and consequently wouldn't have as many cars where they would get the short haul.

Q. Yes, but I am talking only about the segment of the trip from the Twin Cities down through to your plants, such as moves through the Twin Cities, would you have any

particular reason for taking business away from—what business you are giving to the Trunk Line carriers,—and giving it all to the Milwaukee?

A. No.

Q. I think that was the concern some of these gentlemen had on the other side of the table.

A. Yes.

Q. In regard to the question of what you would do and have done with respect to car shortages, I believe you described the procedure you had gone into with the Great [fol. 1069] Northern and Northern Pacific, or whatever the case might be, and pleaded with them to send cars from this part of the country, the central part of the country, out to the Coast for loading?

A. That is right.

Q. You testified, in response to Mr. Rockwood's question, you don't know what the local empty car situation would be on the Milwaukee. You also, and contradict me if I am wrong—

Mr. Rockwood: Just a minute. Please ask questions and don't summarize the testimony of the witness.

Mr. Maguire: What I am doing is preliminary to a question and I think I have a perfect right to do it.

Mr. Rockwood: Please don't give your version.

Mr. Maguire: Please state your objection and stop haranguing me.

Exam. Dishman: Finish the question.

By Mr. Maguire (continued):

Q. It is my recollection that you stated in response to questions from Mr. Rockwood that while you do not know what the empty car situation is out on the western end of the Milwaukee, out in the Pacific Northwest, that you had no difficulty in the territory local to Iowa and the Central states; am I correct about that?

A. Yes.

Q. Then will you state whether or not in your opinion and based upon your observation of the lack or shortage of cars in this part of the country, whether you would feel en-

[fol. 1070] couraged to ask the Milwaukee in case of shortages in the West where to send some of the empties out there for eastbound loading?

Mr. Rockwood: I object as argumentative and as a leading question. You are not asking the witness to state any fact; you are asking him whether in his opinion he would feel free, some time in the future to do something for which you have laid no foundation. I object, as argumentative.

Exam. Dishman: The witness has stated he met this situation by asking other lines to send cars out; is that right?

The Witness: That is right.

Exam. Dishman: As I understand it, if shortages should develop in the future and if the Milwaukee should prevail in this proceeding, would you feel free to call upon them; is that the question?

Mr. Maguire: Yes.

Exam. Dishman: Would you or would you not?

A. Yes, decidedly.

By Mr. Maguire:

Q. Now, then, you stated there has been,—I am directing your attention now to the testimony regarding Prineville Junction on the Oregon Trunk Railroad.

A. Yes.

Q. And there was some reference to loading at Prineville Junction; would you elaborate on that a little bit and state what you mean that there has been loading at Prineville Junction?

A. I think that was caused because of the car situation [fol. 1071] —it was trucked out of there.

Q. Where does this lumber come from which is loaded at Prineville Junction?

A. I am not positive. There are some small mills in that locale. It was a case of shortage of lumber that we were able to buy probably loaded at that point. I don't recall what the shipper's name was.

Q. Yes, and do you mean that Prineville Junction is an origin point for some of the lumber you have received as far as the rail transportation is concerned?

A. Yes, but it would be very small.

Mr. Maguire: That is all.

Recross examination.

By Mr. Rockwood:

Q. Is it not a fact that Prineville Junction has no facilities for loading and have merely an interchange track for interchange of cars between the city of Prineville Junction and the trunk line?

A. I don't know the situation right at Prineville Junction.

Q. Mr. Waller, are you aware of the functions of the Association of American Railroads in supervising the distribution of cars throughout the United States?

A. Yes, I am.

Q. And in the periods of car shortages the railroads generally will accept the advice or directions of the Association of American Railroads and would not send an [fol. 1072] empty train of cars west just because you called them up and asked them to, would they?

A. No, but they might make a greater effort to help me out of the situation.

Q. And the Milwaukee and the Northern Pacific and the Union Pacific and the Southern Pacific, all roads serving Oregon and Washington are all in the same boat so far as supervision by the American Association of Railroads is concerned, is that right?

A. Yes.

By Mr. Torinus:

Q. I have one or two questions with respect to this matter of tracing cars. Mr. Waller, in your telephone calls to St. Paul with reference to tracing cars, are you familiar with the fact that the Great Northern in St. Paul daily has a telegraphic report of the time the car leaves an origin on the S. P. & S. and the time it passes Spokane, Whitefish on the Great Northern; Wilmer on the Great Northern, and will accept calls from you, collect?

A. I don't know they will accept calls collect.

Q. But you know they have that other information, do you?

A. Yes.

Q. If it should develop that the Great Northern will accept collect calls and will furnish that information to you, and the Milwaukee should be successful in this case, are you going to take business away from Great Northern and give it to the Milwaukee?

A. Well, there will be some business probably taken from [fol. 1073] both the Great Northern and the Northern Pacific, because we have the long haul from Spokane. Those two roads participate in it now and then it goes on another line from Minnesota Transfer, to Dubuque.

Q. You would have no rate advantage by turning it over to the Milwaukee and I am just wondering why you would take business away from those lines and give it to the Milwaukee.

A. Well, the Milwaukee serves us, Dubuque, and they are pretty good friends of ours for a good many years and they handle more building woodwork than any other single carrier and they would show us how many mills they serve.

Q. To the extent that the Milwaukee gets any additional long-haul business out of this case, the Great Northern or the Northern Pacific or both lines are going to lose that long-haul business, isn't that right?

A. Or the Union Pacific.

Mr. Torinus: I have no further questions.

The Witness: That is, they are going to lose a portion of the business. Don't get the idea I would cut the Northern Pacific and Union Pacific off entirely, for the Milwaukee.

By Mr. Torinus:

Q. To the extent the business is turned over to the Milwaukee, some other lines will lose out?

A. Between Spokane and Minnesota Transfer, and between Spokane and Omaha, yes.

By Mr. Musenbrock:

Q. How do you square that with your testimony con- [fol. 1074] cerning Des Moines? You said you still would take care of the Twin Cities connections.

A. I would then still take care of the Twin Cities connections with the bulk of the tonnage that comes into Dubuque.

Q. I am speaking of Des Moines. You just asked Mr. Torinus or answered him, rather, concerning Dubuque, and I asked you some questions before concerning Des Moines. I am just puzzled how you square your testimony concerning Dubuque with what you have already said concerning Des Moines business.

A. What I tried to explain was that the Des Moines business is very minor compared with our Dubuque business.

Q. To the M. & St. L., it is the Des Moines business, because we don't operate into Dubuque.

A. Yes, but you get an awful lot of business between Minnesota Transfer and Albert Lea.

Q. How do you then square this Dubuque situation with Des Moines, if it can be?

A. Well, I explained that so far as the Western Trunk lines that serve Dubuque from the Minnesota Transfer are concerned, they would get an equal amount of business whether this rate goes in or doesn't go in via the long haul Milwaukee, but that the Milwaukee wouldn't get the short haul business from the Minnesota Transfer into our plant because we substitute those cars by the long haul business from Spokane. In other words, Western Trunk lines wouldn't suffer one iota.

[fol. 1075] Exam. Dishman: Are there any other questions?

By Mr. Golden:

Q. If these rates were in effect you would give the Milwaukee some business but you would leave some for the Northern Pacific and Great Northern on the long haul?

A. Yes.

Q. That being true, I presume that is just a matter of friendship; there is no compelling reason otherwise?

A. No; we are friends with the Great Northern and friends with the Northern Pacific.

Q. There is no compelling reason why this business

should be taken from these lines and given to the Milwaukee?

A. There is this reason, you do have a single line haul as explained. If they have that short line haul it is a little easier to do business and we then could use that long haul tonnage on outbound business going to Chicago or to eastern points or southern points.

Exam. Dishman: Is time in transit an important factor to your business?

The Witness: Yes, it is. That is based on the sales contract. For instance, I traced some cars just the other day with the Great Northern because we wanted to get those cars into Dubuque because we had to pay the invoice ten days after the car had left a point of origin and we didn't like to pay the invoice without seeing the cars, and, seeing the condition the cars were in, the grade of lumber, and [fol. 1076] things of that nature. In other words, like buying a pig in a poke.

Exam. Dishman: Proceed.

By Mr. Rockwood:

Q. You have talked about the advantage of a single line haul. I assume you are referring to the possibility of a haul solely by the Milwaukee from Spokane to Dubuque.

A. That is right.

Q. Would that give you a better service than via the Northern lines and Minnesota Transfer and down to Dubuque; would it give you faster service?

A. It would be problematical but I think we wouldn't have the delay that we do have at the Minnesota Transfer.

Q. For the delay at Minnesota Transfer you might substitute some delay at Spokane which the cars from S. P. & S. points on the Northern lines wouldn't run into?

A. That is problematical, too; that is so.

Q. If there is that offsetting factor incurring delay at Spokane on the interchange to avoid delay at Minnesota Transfer, it is about as broad as it is long, isn't it, whether it moves long haul to the Transfer or long haul from Spokane to Dubuque?

A. Taking what you said as to the facts at Spokane, yes.
Q. But you never checked those things?
A. No.

By Mr. Hillman:

Q. Mr. Waller, I still can't square your statements that the Western Trunk Lines won't suffer one iota with the subsequent statement you find a single line haul preferable; [fol. 1077] as I understand that, to the extent you prefer to ship on a through route as the Milwaukee if this petition is granted, then the Western Trunk Line carriers delivering at present from Minnesota Transfer, your plant at Des Moines, for example, is going to be eliminated from a portion of the traffic available to them at least to the extent that the Milwaukee shall get a through route all the way from Spokane, down to Des Moines, isn't that correct?
A. Not at all. Instead of giving the Milwaukee the haul from Minnesota Transfer down to Des Moines or to Dubuque, we take it away from the Milwaukee and give them a long haul to Spokane.
Q. Does the North Western serve Dubuque?
A. No.
Q. Your statement won't apply so far as the North Western is concerned?
A. No, that would be very minor.
Q. But it wouldn't apply so far as the North Western is concerned?

Mr. Maguire: You mean to Dubuque?

A. They don't get it today.

By Mr. Hillman:

Q. The North Western would have traffic taken from them from the Twin Cities down to Des Moines, and as far as Dubuque is concerned, the North Western wouldn't be included in that in compensation?
[fol. 1078] A. They would have the same opportunity they have today. Instead of giving the Milwaukee any haul from the Twin Cities to Des Moines, we could give the Milwaukee

the long haul to Spokane and take away from the Minnesota Transfer.

Q. Do you think you would do that?

A. Why not? If I give the long haul they certainly ought to be tickled to death with it.

Q. That is on the assumption that the Milwaukee having the long haul from Spokane to Minneapolis is willing to file the through rate with the—

Mr. Maguire: Mr. Hillman, in the complaint we say we are willing to preserve open routes and also open rates and divisions.

By Mr. Hillman:

Q. Assuming that is the intent, I apologize, but assuming that is the case, if that were to be done that would be ignoring completely what you stated to be your experience, you would prefer a single line haul where possible?

A. Yes, but I have to do business with these other roads too, naturally. I am not going to take that business away from them, if this case happens to be decided in favor of the Milwaukee.

Mr. Hillman: Off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

[fol. 1079] By Mr. James:

Q. One question suggested by these questions on cross examination: Do you know how interchange is effected between the Northern lines and the Burlington in the Minneapolis-St. Paul area?

A. No.

Q. You don't know the—

Mr. Maguire: I am going to state an objection.

Mr. James: I am going to state my question and you may object. I don't intend to have Mr. Maguire tell me how to ask questions and he can direct his objections to the bench.

Exam. Dishman: Finish the question.

By Mr. James (continued):

Q. You don't know whether the interchange between the Northern lines and the Burlington, and St. Paul, in the St. Paul-Minneapolis area is done directly at Minneapolis and that the cars do not go through Minnesota Transfer?

Mr. Maguire: Before you answer that, that is the question I knew was going to be asked and I objected to it, and the witness has said he doesn't know and then counsel is trying to supply the deficiency in the record.

Exam. Dishman: The witness may answer; do you know?

The Witness: No.

Mr. Maguire: The question does not count as testimony.

Mr. Golden: May we have that understood as to your statements, Mr. Maguire?

[fol. 1080] Exam. Dishman: Let us proceed. Is that all, Mr. James?

Mr. James: That is all I have.

Exam. Dishman: Does that conclude the questions of this witness?

Mr. Maguire: No redirect.

Exam. Dishman: You are excused, thank you.

(Witness excused.)

Exam. Dishman: We will have a ten-minute recess.

(Ten-minute recess.)

Exam. Dishman: The hearing will come to order.

E. J. Balda having been previously sworn, resumed his testimony as follows:

Direct examination.

By Mr. Maguire:

Q. State your name.

A. E. J. Balda.

Q. Where is your residence and what is your occupation?

A. My residence is Oshkosh, Wisconsin; I am traffic manager of the Wisconsin Woodwork Manufacturers' Traffic Association.

Q. Will you state very briefly your experience in traffic work?

A. I have been with the Association over 31 years.

Q. And what do your duties include?

A. Acting as consultant-adviser to the 14 members of the Association. Our Association is a voluntary unincorporated non-profit organization. Its members are located at Ladysmith, Wisconsin and Medford, Wisconsin.

[fol. 1081] Mr. Torinus: Do you want to indicate what railroads those towns are on?

The Witness: Ladysmith is on the Soo Line; Medford, Wisconsin is on the Soo Line; Hawkins, Wisconsin is on the Soo Line; Marshfield, Wisconsin is on the Soo Line; it is also on the Omaha and North Western.

Merrill, Wisconsin is on the Milwaukee Road; Randolph, Wisconsin is on the Milwaukee Road; Neenah, Wisconsin, Oshkosh and Fond du Lac are on the Soo Line, Milwaukee Road, and the North Western.

By Mr. Maguire:

Q. And in what business are your 14 members engaged?

A. In the manufacture of doors, sash, and other building woodwork.

Q. And have you been authorized by your Association or by its governing body to appear in behalf of the Association and its members, as a witness?

A. The board of directors instructed me to appear at this hearing on behalf of the members of the Association.

Q. And what kinds of lumber or materials do your members use in their manufacturing processes?

A. Primarily pine shop lumber usually called Ponderosa pine.

Q. From what part of the country do you get this pine?

A. Well, it is Northern California, Oregon, Washington, Idaho and Montana.

[fol. 1082] Q. Do you have any figures available as to the number of carloads they have moved during either the

current year or any recent year from the West Coast generally and then, in particular, from points in Oregon in the territory served by any members of the S. P. & S. system?

A. Well, our group had approximately 3100 carloads during 1953 from all West Coast lumber origins that I have mentioned before and during that same time 431 cars originated at Bend, Oregon; Klickitat, Washington; Madras, Oregon; Prineville Junction, Oregon; Prineville, Oregon, and Redmond, Oregon.

Q. Now, what do your outbound shipments from these various plants that you have mentioned here consist of?

A. They consist of sash doors and other building woodwork in the amount of about 3300 carloads outbound.

Q. Well, do those outbound shipments move under fabrication or manufactured in transit privilege?

A. Manufacturing in transit privileges, yes. That is the majority of them, I would say; I wouldn't say all of them do.

Q. In what general territory are the products of your members marketed?

A. Well, of 80 percent, I would say, approximately 80 percent go to the territory east of the Illinois-Indiana State Line, and north of the Ohio River, and the balance would go to other territory south of the Ohio River, to the Southwest and also to the West Coast. I might add that our shipments to the West Coast are usually what we call veneered doors. We don't ship any sash out there, what we call a product that is made entirely of West Coast Pine.

Mr. Rockwood: You mean shipments to the West Coast are all white pine?

The Witness: They are straight carloads of veneer doors, a pine door with hardwood veneer.

Mr. Rockwood: In other words, do you mind if I straighten that out?

Mr. Maguire: Not at all.

Mr. Rockwood: The sash is of a material other than the West Coast product?

The Witness: That is right.

By Mr. Maguire:

Q. And can you tell me as to the portion of the inbound lumber from the West Coast that originates in the S. P. &

S., when I say S. P. & S. I include S. P. & S. subsidiaries, the Oregon Trunk, in particular; these origins you mentioned, how is that at the present time generally routed.

A. When it is to Soo Line points, S. P. & S., Great Northern.

Q. Give your junction in there, will you please?

A. Spokane, Great Northern or Northern Pacific, Minnesota Transfer, Soo Line to Milwaukee Road points; it would be the same routing except that it would be Minnesota Transfer, Milwaukee Road; and to points served by the North Western it would be the same routing except that it [fol. 1084] would be Minnesota Transfer; C. St. P. & O., C. & N. W.

Q. I notice that in four of these points which you have mentioned you said that Marshfield was served by the Soo Line, the Omaha and North Western and that Neenah, Oshkosh and Fond du Lac are served by Soo Line, Milwaukee and North Western. Now, from Minnesota Transfer to these particular points, would you state whether the traffic is distributed among the three railroads serving the plants in question, or whether they move habitually by any other railroad?

A. I didn't ask for that information from our people so I wouldn't know that. I think that all three railroads share but in what proportion, I wouldn't know.

Q. I wasn't asking the proportions but I ask whether they do share; and can you state the reasons why or whether you route any shipments via S. P. & S. to Spokane, then Milwaukee to the Minnesota Transfer or to the plant if it is served by the Milwaukee.

A. No, we do not because we would not be able to use the milling in transit privileges because there are no routings to points east of the Illinois-Indiana State Line which permit application of through rates.

Q. And as to the common points on the Oregon Trunk Railway between the Oregon Trunk and the Union Pacific what, if any, limitations or restrictions are there on shipments that might be shipped out joint line on those common points—

[fol. 1085] A. You mean Union Pacific origin points?

Q. Yes, Union Pacific, Marengo, Milwaukee.

A. If it is routed inbound Union Pacific, Marengo, Milwaukee Line, the outbound routing must be via Milwaukee across Lake.

Q. And is there any limitation upon the destination territory, east of the cross-lake route to which such shipments can be shipped on the Union Pacific, Marengo, Milwaukee route?

A. It would be only lower Michigan, eastern Indiana, and east thereof, and north of the Ohio River.

Q. Now, are you aware of the issues that are involved generally and what the Milwaukee seeks? I mean, in the instant proceeding?

A. I think I am.

Q. And would you state whether the establishment of joint thru rates off the S. P. & S. to Spokane thence via Milwaukee and its connections it is the same territories as are now covered by similar joint rates between the S. P. & S. and the Northern Pacific or the Great Northern would be of benefit to the members of your Association?

A. We think it would give us an additional route; it would facilitate tracing of cars; and also give us a possible extra supply of cars where the Milwaukee Road might furnish to western carriers or western connections.

Q. Have you ever had occasion, you or your members, to your knowledge,—had occasion to consider the purchase [fol. 1086] of cars which originated on the S. P. & S., were turned over to the Milwaukee in Spokane and which for some reason or other were travelling or moving unsold?

A. That happens occasionally.

Q. And what are you able to do about the purchase of those cars so far as the conduct of the business of your members is concerned?

A. When our members buy such cars, of course they cannot use them for transit or they might buy them because they are short of lumber, or buy them by mistake, thinking they could use transit. That has happened in the past but I haven't had any information of anything like that in the last few months.

Q. And what is the general situation with regard to the

supply of the types of West Coast lumber which you use? What I am particularly directing this question to is whether there are periods of plentiful supply and also whether there are tight periods of supply, of scarcity?

A. That is true; there is a shortage of cars at different times and I think the last one was about three years ago—

Q. No, I am talking about the supply of lumber.

A. And the supply of lumber depends upon the operation out on the West Coast and of course during the last summer we had a strike out there, and lumber was quite short.

Q. Well, during those periods of short supply, would you state whether or not it is desirable to your members [fol. 1087] to be able to purchase lumber moving over as many routes as possible?

A. That is correct.

Q. And now this strike last summer in the lumber industry, is that the first strike that ever had resulted in a scarcity or had it happened more than once in the past?

A. It seems to be a periodical thing.

Mr. Rockwood: May I understand his question? Do you have information as to how frequently or when similar strikes have occurred? Do you mean they happen every year, or what?

The Witness: I wouldn't say they happen every year. They happen every two or three years. Our people have them ourselves.

Mr. Rockwood: Did they have any in the past 2 or 3 years?

The Witness: I know there have been, but I can't just exactly state what year it was, previous to that.

By Mr. Maguire:

Q. Are they an unheard of event or do they happen at—have they happened more than once in your experience; that is what I am getting at?

A. Yes, absolutely.

Q. Now, I think you misunderstood one question of mine; we were talking about two different things, one was shortage of lumber and you started talking about shortage of cars.

Have you any comment as to what benefits might accrue by the establishment of these joint through rates free of limitation if your people can utilize them in case of shortage of cars?

[fol. 1088] A. Some of our members have very limited storage facilities so they are naturally interested in having frequent movement. In fact, I remember an occasion here about three years ago where several of our members were figuring on trucking lumber all the way from the West Coast because of the shortage of cars out there, but when they got a quotation of about $4 a hundred, they naturally had to forget it. So that is what a car shortage can cause, —unemployment in our manufacturing plants.

Q. Will you state whether or not with respect to car shortages, whether you are of the opinion that the establishment of the through rates as requested by the Milwaukee would have any effect, either beneficial or otherwise, in the period of car shortages?

Mr. Rockwood: I object as calling for a conclusion of the witness, as calling for an opinion on the subject as to which no foundation has been laid to show he is qualified as an expert to express an opinion.

Mr. Maguire: I think, Mr. Examiner, that this gentleman is an experienced traffic manager of long years' standing and that if there is no foundation for any opinion, it can certainly be elicited on cross examination.

Exam. Dishman: How long have you been traffic manager?

The Witness: Over 31 years.

Mr. Maguire: That is a general transportation question. I don't think there has to be a technical foundation laid.

[fol. 1089] Mr. Rockwood: I repeat this man is not shown to be qualified to express an opinion as to the effect of an additional route from the Northwest on the supply of cars in the Pacific Northwest.

Mr. Maguire: Let us put it this way, if you want some qualification on it: Mr. Balda, in your 31 years' experience as traffic manager and from your observation, have you come to any opinion as an expert in the traffic field as to the effect in periods of car shortage of the entry of an

additional long-haul carrier into any particular field of transportation?

Mr. Rockwood: May I examine him as to his qualifications? Have you ever—

Mr. Maguire: Just a moment; I would like to have a ruling on that.

Exam. Dishman: Let Mr. Rockwood ask the question.

The Witness: Have I what?

Mr. Rockwood: Have you ever in your 31 years of experience observed a situation such as the Milwaukee seeks to create here of the addition of a long haul route in a situation where there are already some 3 or 4 existing long haul routes? Have you ever seen that situation?

Mr. Maguire: Now, just a minute. I submit, Mr. Examiner, that this is a kind of a, to use a colloquialism, spotted cow question.

Mr. Rockwood: I do not know what that means.

[fol. 1090] Mr. Maguire: And I think his general observation as to the number of carriers available over a certain route, the effect of that on the car supply, I think that is a fair question.

Exam. Dishman: Well, gentlemen, we have an experienced witness on the stand and I want to get his evidence in the record. As an experienced traffic man, I would like you to answer Mr. Maguire's question?

The Witness: Well, from my experience of routings they apply from California there are a lot more routes and include more lines than there is via the Northern routes.

Exam. Dishman: What does that mean?

The Witness: Well, for instance, from California you have Southern Pacific, care of Union Pacific, care of the different lines east of Council Bluffs. You have some lines Southern Pacific, D.&R.G., S.P. and Western Pacific.

Exam. Dishman: Is that in response to the question?

The Witness: Yes; there are a lot of routes.

By Mr. Maguire:

Q. What effect does that have upon your car supply?

A. It seems to me that the more connections you have the better chance you have of getting empty cars westbound.

Exam. Dishman: So, as an experienced traffic man, that is your view?

The Witness: Yes.

Exam. Dishman: You may cover that on cross exam-
[fol. 1091] ination, Mr. Rockwood.

By Mr. Maguire:

Q. Now, when you wish to trace a car which is enroute between Spokane and the Transfer, how do you do it, Mr. Balda?

A. I would have to say: I seldom trace a car; that is a detail that is performed by our own members. The only information I have on that is that when it is with a two-line haul they trace the origin carrier or the intermediate carrier, and then the final destination carrier.

Q. You are talking now about a line northwest of the Transfer and a line east of the Transfer?

A. That is right.

Q. Are you familiar with your members' general practices in that respect as to where they call about their inquiries, that is, to make their inquiries?

A. Yes.

Q. Will you state where they do call,—we will take a car moving between Spokane and the Twin Cities and moving by one of the Western Trunk Lines to the plants of your members?

A. Well, if it would be the Great Northern or Northern Pacific they would call Milwaukee, the general agent's office in Milwaukee of those lines; and if it is a line from the Minnesota Transfer, one of our own destination lines, we would call the local agent.

Q. The plants served by the Milwaukee, if the Milwaukee
[fol. 1092] were handling it from the Coast to the Transfer, and regardless of the route from the Transfer on down south, who would be called?

A. The local agent.

Q. Of what road?

A. The Milwaukee Road.

Q. And would you state it was a convenience in such

instances to your mills which are served by the Milwaukee to put in a local call to the Milwaukee agent in those cases?

A. That is right; it would be.

Q. Are you able to state as a question of traffic policy of your Association whether if the relief sought by the Milwaukee were granted in this case and joint through rates with the same lack of restrictions as apply over the two Northern lines, would also be applicable via the Milwaukee, would the Milwaukee services from Spokane at least to the Transfer, be utilized by your members?

A. Yes, I think so, particularly if it is located only on the Milwaukee Road.

Q. Of course, those located only the Milwaukee Road. Now, to the Transfer,—Milwaukee, Spokane to the Transfer, would that be utilized by your members generally, not exclusively, but to some extent?

A. Yes, they utilize them coming from California.

Q. Do you know of any reason why, regardless of whether the Milwaukee—suppose the Milwaukee is granted these [fol. 1093] rates which apply from Spokane through the Transfer and on east, do you foresee any reason for any change in the present carriers from the Transfer down to the various mills?

Mr. Torinus: I object on the ground that no foundation has been laid.

Mr. Maguire: I think this gentleman is the adviser of the members and is in close touch with their traffic problems and I think I am as much entitled to ask him as an individual mill owner.

Mr. Torinus: He may advise them but he doesn't say they can control their routing.

The Witness: I can influence their routing. I have done it before and I can do it again.

Exam. Dishman: What is your answer?

The Witness: I can influence the routing; I have done it before and I can do it again.

Mr. James: I move to strike as not responsive.

Exam. Dishman: Yes; that is not responsive to the question.

Mr. Maguire: Mr. Torinus has an objection.

Exam. Dishman: I want the witness to answer; I will overrule the objection. Do you understand the question?

The Witness: I think I understand it.

Exam. Dishman: What is your answer?

The Witness: Yes. I said: Yes. I can't route traffic; I can't tell our people how to route it.

[fol. 1094] By Mr. Maguire:

Q. Let me re-state the question. I said: Do you know of any reason why there would be any change from the present routing between Minnesota Transfer and the plants of your members even though the Milwaukee complaint should be satisfied as to through rates? In other words, would you be taking business away from the other Western Trunk Line carriers?

Exam. Dishman: And in your answer give the reasons for your answer?

A. I don't think so, because we usually try to give the railroads the line haul that do the switching in our different plants.

Mr. Maguire: That is all I have.

Cross-examination.

By Mr. Rockwood:

Q. Mr. Balda, you said that in a certain period, and I am not sure just what period it was, it was a year's period, probably, that your members moved 431 cars from certain S. P. & S. points; what was the period?

A. 1953,—the whole year of 1953.

Q. And those points included Bend, Klickitat, Madras, Prineville Junction, Prineville, and Redmond. The fact is, is it not, that with the exception of Klickitat, every one of the points is a point on the Oregon Trunk Railroad?

A. Or the City of Prineville Railroad.

Q. Or the City of Prineville Railroad?

A. Or the City of Prineville Railroad which connects [fol. 1095] with the Oregon Trunk; that is right.

Q. You are familiar with the fact, are you not, that from the Columbia River south to Bend, the line of the Oregon Trunk is used jointly by the Union Pacific?

A. Yes.

Q. So that all of these points on the Trunk are served by the Union Pacific as well as by the Oregon Trunk?

A. That is true.

Q. Do rates apply from the Union Pacific via Omaha and thence one of the Western Trunk Lines into this Wisconsin territory where your members are located?

A. Union Pacific, Marengo?

Q. No, Union Pacific to Omaha?

A. Union Pacific to Omaha.

Q. And thence via one of the Western Trunk Lines to the location of your members?

A. That is true of most of them but it isn't true of points on the Soo Line.

Q. That would eliminate—

A. I am talking about points local to the Soo Line.

Q. That is true of all the locations of your members with the exception of Ladysmith? And Medford and Hawkins?

A. Medford and Hawkins and Ladysmith, that is right.

Q. They are located in northern Wisconsin, are they?

A. That is right.

[fol. 1096] Q. But your other members at Marshfield, Merrill, Randolph, Neenah, Oshkosh and Fond du Lac have the opportunity of purchasing lumber off the Oregon Trunk and moved it at through rates to their plants and then after manufacture in transit to destinations as freely as though the material came via the Northern lines and the Transfer, isn't that right?

A. No, that isn't true.

Q. What is the limitation on the Union Pacific?

A. If the tonnage is routed Union Pacific, Council Bluffs, we cannot use the points south of the Ohio River, St. Louis, Missouri, or points west of the Mississippi River.

Q. On that route there is no limitation of the use of cross-lake routes, is there?

A. No, there isn't.

Q. So that by the use of that route and without the use of cross-lake routes you can reach the territory east of the

Illinois-Indiana State Line and north of the Ohio River, can you not?

A. That is right.

Q. To which 80 percent, you say, of the outbound business of your customers moves?

A. That is right.

Q. So that with respect to 80 percent of the outbound business of your customers, the transit privileges are as favorable via the Union Pacific, Omaha route as they are via the Northern Lines, Twin Cities route?

[fol. 1097] A. That is correct.

Q. And also from all those points on the trunk which are common to the Oregon Trunk and the Union Pacific if the shipper wishes he can move Union Pacific, Marengo, Milwaukee to these plants with transit to eastern territory via the cross-lake routes?

A. That is right.

Q. And the cross-lake routes again allow you to reach all of the territory north of the Ohio River and east of the Indiana-Illinois line, does it not?

A. No.

Q. What is the limitation?

A. It is just eastern Indiana. There are no routes via cross-lake routes through western Indiana, like Indianapolis and Terre Haute; we couldn't get in there.

Q. Except for that western Indiana territory you can reach the same territory as that to which 80 percent of the business of your members goes via the cross-lake routes?

A. That is right.

Q. So you can give the Milwaukee the long haul from Marengo to these Milwaukee destinations and manufacture in transit and ship to the territory and reach most of the territory to which 80 percent of your business goes?

A. Yes, we could do that but we don't do that.

Q. You don't like it?

A. We like to have the northern routes, too.

[fol. 1098] Q. Sure, we would like to have them too but these are alternate ways by which your members can secure western pine, the routes that are open?

A. That is right.

Q. Now, out of Klickitat, Washington, that is a point local to the S. P. & S., what is the mill at that point from which your members purchase?

A. I don't know the name of it.

Q. It has been talked around in this hearing. Other witnesses have referred to the J. Niels Lumber Company, at Klickitat.

A. I don't know, to my personal knowledge.

Q. I take it then you don't know who is immediately responsible for the routing of traffic out of Klickitat?

A. There are 14 cars out of Klickitat.

Q. 14 out of the 431?

A. Yes.

Q. Klickitat isn't of much importance, then?

A. It might vary at different periods. I don't say that's representative at all.

Q. That was 14 in the year 1953?

A. That is all.

Q. Out of 3100 from all sources, including California?

A. Yes.

Q. And out of 431 from the points in the Oregon Trunk plus Klickitat?

[fol. 1099] A. Yes; it might be that the other manufacturers are able to get more of a proportion than our people do for some reason.

Q. Of that 3100 how much comes from Northern California?

A. I would say approximately 50 percent.

Q. And that is Ponderosa and sugar pine?

A. There might be some sugar pine in there.

Q. How much comes from Idaho origin points, do you know?

A. A very small proportion.

Q. Idaho is more largely white pine than Ponderosa, is that right?

A. It seems to be.

Q. Your members use Ponderosa?

A. Yes, that is right.

Q. And there is a difference in the structure of the two woods, I take it?

A. There is, yes.

Q. Does Ponderosa in Oregon and eastern Washington generally have the same general characteristics as the Ponderosa from Northern California?

A. That is what I understand. If I saw the two of them together I wouldn't know the difference, but a good wood man could.

Q. How much do you get out of Montana?

A. There are some cars coming out of there; that is quite spotty too.

Q. Realizing that these figures are only estimates you [fol. 1100] say about half comes out of California. That would be about, arithmetically, 1550 and 431 from these points from the Trunk and Klickitat; that is, about 2,000 in the aggregate. So it is in the neighborhood, roughly, of 1100 cars from other mills served by the Union Pacific, the Great Northern and the Northern Pacific, and the Milwaukee in Oregon, eastern Washington, Idaho and Montana?

A. That is right.

Q. The Union Pacific in Oregon,—what species comes out of the Burns country, do you know?

A. That is pine.

Q. Is it Ponderosa or white pine?

A. I understand it is Ponderosa.

Q. And the remaining timber over in the Burns country is more extensive than the timber in the Bend country along the Trunk, isn't it?

A. I don't know about that.

Q. Is there any market in the United States that you cannot reach with manufacturing in transit privileges from the plants of your members of Ponderosa pine originating on the Oregon Trunk via the S. P. & S. to Spokane and the Northern lines to the Twin Cities, and thence a Western Trunk Line carrier to your plants; is there any place in the United States that you can't reach?

A. Yes.

[fol. 1101] Q. Where?

A. There is a lot of territory. We can't get to western Texas; we cannot get to Colorado; we cannot get to Wyoming; we can't get to Minnesota as far as that is concerned.

Q. If the Milwaukee should win this case, you wouldn't have any larger marketing territory than you have now, would you?

A. No.

Q. You would have precisely the same marketing territory?

A. That is right.

Q. Well, as I made my notes here, the three reasons you give why you believe that that which the Milwaukee seeks in this case would be a benefit to your members is: 1. It would give you an additional route; 2. It would facilitate car tracings; and 3. there is a possible, and you used the word possible, an additional source for car supply. Those are the three reasons you have, are they not?

Mr. Maguire: You have not mentioned them all, Mr. Rockwood, I protest that this is pretty much of a sample of what has gone on here during this cross examination and that is that counsel has summed up a few of the benefits mentioned by the witness and then trying to get him to—

Exam. Dishman: The record speaks for itself.

Mr. Rockwood: I would like to have the record read to find out precisely what the answer was that was given when that question was asked by Mr. Maguire as to the [fol. 1102] benefits received by its members.

Mr. Maguire: If it has been answered, you can sum it up in the brief.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. You gave those as three reasons why your members would be benefited, didn't you, Mr. Balda?

A. Yes.

Exam. Dishman: Now, are there any additional reasons that you can think of now?

The Witness: That would be purely a guess on my part. I imagine we might get better service that way.

By Mr. Rockwood:

Q. You mean faster service?

A. Faster service.

Q. From origin to destination?

A. That is right.

Q. That is just a guess, is it?

A. That is a guess but I think any service is a guess, because I have seen schedules that never were lived up to.

Q. Do your members order direct from the mills with specification as to grades, size, quality and such; each car is a tailor-made order, is it not?

A. No; some of them will buy 40 and 50 carloads at a time. Some will buy 2 or 3 carloads and some others [fol. 1103] might buy only one carload. Some might buy direct from the mills; some from a broker.

Q. Are they firm orders; are they purchased by your members before the cars leave the mill?

A. Not all of them, no. I said some of them were purchased through brokers.

Q. But the brokers do firm order business and sell as wholesalers before the cars leave the mill; you are aware of that, aren't you?

A. No, I am not. A broker, a good many times, sells a car after it has been rolling.

Q. That is very true but he also does firm business, so characterized?

A. That is true.

Q. Are your orders which are placed with brokers firm orders?

A. Not all the time, no.

Q. What proportion of your orders are firm orders?

A. I don't know.

Q. What proportion of your orders are, if you know, purchased after the car leaves the mill at the point of initial loading, do you know?

A. I don't know.

Q. You were talking in connection with the car supply situation about the favorable treatment you get from California because of the numerous lines serving California. [fol. 1104] What are the principal terminal lines in California, serving the timber area?

A. The Western Pacific, Santa Fe, Southern Pacific.

Q. Those three?

A. And then, of course, you have some smaller short connections, Northwestern Pacific.

Q. Which is part of the Southern Pacific system?

A. Yes.

Q. Are you familiar with the situation of a severe car shortage in the fur belt on the Pacific Coast about, I think, three or four years ago?

A. No, we don't buy fur.

Q. At that time or about that time, was there a serious car shortage on the Southern Pacific in the Northern California pine territory, do you know?

A. Only what I hear.

Q. Did you hear of a car shortage of the Southern Pacific at the time they had a car shortage in Oregon?

Mr. Maguire: I think that is a pretty extreme infringement upon the hearsay rule.

Exam. Dishman: Well, he can state only what he heard; he can state how he heard it.

Mr. Rockwood: As a matter of fact, on cross examination, he can call for hearsay testimony.

Mr. Maguire: That is an innovation in the law of cross [fol. 1105] examination which originated just now, with you.

Exam. Dishman: The witness testified as to strikes, did he not?

Mr. Rockwood: I wasn't talking about strikes but car shortages; I am coming to strikes.

The Witness: As far as car shortages go, all you have to do is read of the Midwest Shippers' Advisory Board meetings, and the Northwest Shippers' Advisory meetings, and you read all about it.

By Mr. Rockwood:

Q. You read about the car shortages on the Southern Pacific in southern Oregon three or four years ago?

A. I think I did.

Q. Do you know whether at the same time the Southern Pacific had a serious car shortage in Northern California?

A. I don't know; I imagine before some of our people were figuring on trucking lumber from the West Coast,—that was lumber. You were talking fur and we don't handle fur.

Q. That finally cost $4 a hundred?

A. $4 a hundred pounds.

Q. Not feet, board measure?

A. No.

Q. In the last year has there been any car shortage on the S.P. & S. system in so far as lumber loading is concerned?

A. I haven't heard of any.

Q. Now, the addition of the Milwaukee through Spokane [fol. 1106] would not increase the number of cars loaded out of the Pacific Northwest, would it?

Mr. Maguire: You mean this past year? Let us get a fair question.

By Mr. Rockwood (continued):

Q. In the future,—the addition of a route would not tend to increase the number of shipments originating in the Northwest Territory, would it?

A. I think there is just so much lumber out there; so much is produced and that is all they can ship.

Q. If in the future there would be no increase in the tonnage moving across the country, and if the S. P. & S. has been able to supply its shippers with cars, what leads you to believe that you need the Milwaukee in order to increase the car supply?

Mr. Maguire: May I interrupt?

Mr. Rockwood: He has already stated that that would be—

Mr. Maguire: Would you let me state my objection? The wicked flee whom no man pursueth, it seems to me. This question which is now asked this witness is premised on one answer only and that is that during the past year there has been no car shortage so far as the S. P. & S. is concerned. Counsel then proceeds to say: Do you think in the future there will be any improvement in the situation where the S. P. & S. hasn't any shortage during the

past year, that question should read, and I think that is unfair unless the witness is qualified.

Exam. Dishman: Is that the question?

[fol. 1107] Mr. Rockwood: Yes, I am basing it on the facts that have been brought out here now.

Mr. Maguire: You are basing it on the past year's record?

Mr. Rockwood: Yes.

Mr. Maguire: May we have the question read?

Exam. Dishman: Read it.

(Question repeated by the reporter.)

By Mr. Rockwood:

Q. Let me ask you one preliminary question. Do you know, personally, of any time when the S. P. & S. has been unable to supply its lumber shippers with cars?

A. No, I don't think anybody personally knows that.

Q. You don't know whether that is true?

A. Except the people out on the West Coast who ordered lumber from them and tell us they can't get cars to ship the lumber we have ordered.

Exam. Dishman: You don't know of your own knowledge?

The Witness: Absolutely not; our lumber purchasers would know that.

By Mr. Rockwood:

Q. That being the fact, what leads you to believe that the addition of a Milwaukee route would improve the car supply situation on the S. P. & S.?

A. There would be another additional carrier that would be willing to furnish the empty cars for eastbound movement.

Q. Do you know whether the Milwaukee is kept fairly busy supplying cars for the traffic it handles itself?

[fol. 1108] A. I know they take good care of our people in our territory.

Q. We have some friends who say that about the S. P. & S. too. It is a fact that your remarks about car supply

can fairly be characterized as conjectures on your part, isn't that correct?

Mr. Maguire: That is purely a matter of argument and I think counsel can draw his own conclusions in argument to the Commission as to whether these are conjectures or not.

Exam. Dishman: I think that is right.

By Mr. Torinus:

Q. In the matter of tracing cars you mentioned I believe you said your members in Wisconsin could call—those who are on the Milwaukee could call the local Milwaukee agents to trace cars located on the Pacific Northwest and that would be a convenience to them; is that your testimony?

A. That is right.

Q. Are you able to get from the local Milwaukee agent telegraphic information; would he have that available to him as to the location of cars on the Milwaukee or on the S. P. & S., do you know?

A. You would have to take it up with their Milwaukee office.

Q. You would have to make a call?

A. You would telegraph there or probably make a telephone call.

Q. Do you know where you would call?

A. You would call Milwaukee.

Q. Isn't it a fact that your members could get quicker information as to the location of cars on the S. P. & S. [fol. 1109] and the Great Northern and on the S. P. & S. and Northern Pacific if they place a collect call to St. Paul-Minnesota?

A. I don't think our people place collect calls. I just learn you can do it, but my experience has been if we make a collect call we are asked: Who is it and what do you want to talk about? So I don't want to be embarrassed any further when I call but our field men have had that same experience.

Q. Is it more of an inconvenience to place a collect call in that manner than to call a local agent who might have

to spend some time in locating a car, is that your testimony?

A. I think it is more convenient to make a local call than a long distance call.

Q. Is it more of a convenience to make a local call if you have to wait for information? That was the question. In so far as the location of these cars is concerned? Isn't it a fact, Mr. Balda, you haven't had sufficient experience on that particular matter to express an opinion as to what would be a matter of convenience and what would not be; isn't that correct?

A. Well, as I said before, I do it occasionally just because probably somebody is on vacation and the man who usually does the tracing is gone and they ask me to help them out. That is my experience with tracing.

Q. In the event, Mr. Balda, that the Milwaukee is successful in this case, the additional traffic which they would [fol. 1110] handle if they handled any out of Spokane and between Spokane and the Twin Cities, would be at the expense of either the Great Northern or Northern Pacific or both lines, isn't that correct?

A. I think that is obvious.

Q. You have said that to a certain extent you influence the routing of your members, is that true?

A. I can.

Q. Do the solicitation forces of the Milwaukee Railroad, for example, influence routing?

A. And the solicitation forces of the Great Northern and Northern Pacific do too, yes.

Q. All solicitation forces can influence routing to a certain extent?

A. Absolutely.

Q. With a single line route of the Milwaukee Railroad from Spokane to certain points in Wisconsin, where your members are located, would not the Milwaukee solicitors be in a position to attempt to influence the routing of the traffic in a manner different from the way in which that traffic is routed today, both from Spokane to the Twin Cities between Spokane and the Twin Cities, and beyond the Twin Cities to the Wisconsin territory?

A. They could attempt to do it but I wouldn't say they

are going to get all the business. They might get a fair [fol. 1111] proportion but I wouldn't say they would get all the business.

Q. Did your organization ever make a demand of any railroad rate bureau for these through routes and rates which the Milwaukee is using in this complaint?

A. Not in this particular complaint; I have in other cases but this one isn't one in point.

Q. Did your organization ever make a request of any railway official for these routes the Milwaukee is seeking in this case?

A. No.

Q. You are here testifying in this proceeding on behalf of the Milwaukee, at their solicitation, is that correct?

A. Yes.

Mr. Rockwood: No more questions from me.

Mr. Torinus: That is all I have.

Exam. Dishman: Is there any other cross examination?

By Mr. Hillman:

Q. Are there any points in the Pacific Northwest which are served directly by the Chicago, Milwaukee from which you receive shipments than Neenah, Oshkosh or Fond du Lac?

A. Yes, we have had some but just what the particular points are, I don't know. I couldn't answer that, offhand.

Q. Those shipments would move between Minnesota Transfer and the Twin Cities, would they not?

A. Yes.

Q. Could you state with any reasonable accuracy at all what the division of the traffic is from the Twin Cities, [fol. 1112] down to Neenah, Oshkosh and Fond du Lac which originates on the Milwaukee, on which the Milwaukee has the long haul and which is destined to Neenah, Oshkosh and Fond du Lac?

A. That is very small. I would estimate it at 1 percent. I doubt if all of the people get more than 35 or 40 cars a year from Milwaukee Road origins.

Q. You may misunderstand the question as to whatever traffic you may have of that nature originating at Mil-

w[illegible] points destined for Neenah, Oshkosh and Fond du Lac to the Twin Cities; will you state what the difference is between the three Western Trunk Lines is, out of Minneapolis?

A. The ones receiving the traffic out of Minnesota Transfer?

Q. Yes, on which the Milwaukee has had the long haul.

A. I would say the North Western gets at least 50 percent; the Soo Line probably would get 25 percent, and the Milwaukee Road 25 percent.

Q. Are those figures available? That is, could you support that estimate which you are now giving, by any statistical information?

A. I haven't any figures recently but I have seen figures from some of the individual firms and I am basing my figures more on one of the largest operations in Oshkosh.

Q. What were the factors which you would say accounted for this situation you have described, that is, for directing a transfer at Minneapolis or St. Paul from the Milwaukee [fol. 1113] to either the Soo Line or the North Western?

A. I don't get your question.

Q. How do you account for the situation you have just described? You have described a situation in which you would at least have implied that the bulk of the traffic originating on the Milwaukee and then going to Neenah, Oshkosh and Fond du Lac is transferred from the Milwaukee at Twin Cities to the North Western?

A. I didn't understand the question. I didn't mean that some lumber originated on the Milwaukee Road.

Q. We have an origin in the Pacific Northwest not necessarily served by the S. P. & S. system, carloads originating on the Milwaukee. It comes into the Twin Cities. The Milwaukee has had the long haul; this car is destined for either Neenah, Oshkosh or Fond du Lac.

Perhaps you misunderstood my question but considering all such cars of that type originating on the Milwaukee in the Pacific Northwest going through the Twin Cities destined for Neenah, Oshkosh and Fond du Lac, could you state with any reasonable accuracy what the division of the traffic is between the three Western Trunk Line car-

riers serving these three ultimate destinations between those three points in Minneapolis?

A. I think I understood your question the first time. I said there was very little of that traffic in the first place, that it amounted to probably less than 1 percent.

[fol. 1114] Q. I understand the traffic is small.

A. And I am quite sure that in a case like that, that you still get the whole,—the North Western gets most of those cars. The reason for that is that they do the switching at the destination point.

Exam. Dishman: I would like to ask counsel just what bearing does this information have on the issues in this proceeding?

Mr. Hillman: I think it has a very direct bearing, your honor. An attempt has been made to indicate that if the Milwaukee were granted the relief as requested, that it would have no impact on the traffic out of the Twin Cities which was available to the connecting trunk line carriers which might serve competitive points along with the Milwaukee.

What I was trying to ask the witness is if whether the present shipping practices might not indicate that those predictions are not quite accurate, due to the fact, for example, that there might be some understandable predilection on the part of shippers to keep a shipment moving on the same road on which it travelled into Minneapolis. In other words, I am trying to test,—I agree we can't do it very accurately on the basis of the estimates or opinion, but I am trying to test what the prediction has been with regard to the past action.

Mr. Maguire: We have no objection to that line of question because we think Mr. Hillman has satisfied himself he isn't going to be hurt, from the questions he asked, and [fol. 1115] the answers he got from different witnesses.

Mr. Hillman: My state of mind is a point of personal privilege.

Exam. Dishman: All right; proceed.

Mr. Hillman: As a matter of fact, I had just about finished that line of questioning at that point for this witness.

Exam. Dishman: Have you any other questions on cross examination?

(No response.)

Exam. Dishman: Anything on redirect?

Mr. Maguire: No, I think I have nothing.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Merrill: We have one more out-of-town witness here who has a two-page prepared statement. May we present him?

Exam. Dishman: Yes.

LAWRENCE C. POWERS resumed his testimony as follows:

Direct examination.

By Mr. Merrill:

Q. You have been sworn before?

A. Yes.

Q. Will you state your name, address and occupation?

A. My name is Lawrence C. Powers; I am Vice President of the Freight Rate Service Company of 2522 Summit Street, Kansas City, Missouri.

[fol. 1116] Q. As vice president of the Freight Rate Service Company, will you state what your duties are?

A. With the general supervision of all matters pertaining to freight traffic.

Q. How long have you been connected with that company?

A. 14 years.

Q. And have you had other traffic experience?

A. Yes, approximately 8 years with the Santa Fe Railroad and about 12 years in the transportation end of the Kansas City Board of Trade.

Q. What department did you work in on the Santa Fe Railroad?

A. The tracing and rate quotation departments.

Q. Have you prepared a statement which you wish to present for the record at this time?

A. Yes.

Mr. Merrill: May we proceed with the statement to be read into the record?

Exam. Dishman: All right.

By Mr. Merrill:

Q. Will you please read your prepared statement?

A. Yes. My name is Lawrence C. Powers, Vice President of the Freight Rate Service Co., 2522 Summit St., Kansas City, Mo. My appearance at this hearing is in support of complainant's petition to the Interstate Commerce Commission, for the publication of joint through rates and [fol. 1117] routes on Trans-Continental traffic in connection with the S. P. & S. Railroad Company.

My firm represents approximately 125 shippers and receivers of freight in Greater Kansas City and its trade territory for whom we handle all matters pertaining to freight traffic. These clients are naturally much interested in having available as many open routes as possible.

The present day sales and merchandising methods have changed radically in recent years. Much of this has been brought about by the competition between the railroads and the motor vehicle transportation, both the common carrier and contract hauler.

Retailers and wholesale distributors alike are prone to keep their inventories as low as possible. This is encouraged further by the fact that the motor carrier rates are to a great extent competitive with the railroads and are as a rule based on much lower minimum weights.

One of our clients may ship a carload of peanut butter to a destination on the S.P. & S. in Washington and may have only a portion of the lading for the destination point but could be filled out with the same merchandise to a local location on the Milwaukee Road in Montana and also still another portion for Spokane, Washington.

The present routing restrictions would eliminate the Montana stop although this point could possibly have the greatest portion of the load. The current route set-up would have the effect of prohibiting this stop and would

[fol. 1118] thereby reduce the balance of the car below the minimum weight required.

This could result in all three portions of the car moving via motor freight, thus we see the Milwaukee and the S. P. & S. deprived of traffic for lack of a logical and reasonable route.

The same condition exists on eastbound traffic of lumber, iron and steel products and numerous other commodities where for the most convenient, efficient, and economical method of handling merchandise under present conditions it is necessary that all reasonable routes be open to all of the rail carriers for the performance of all incidental services such as diversion or reconsigning, stops in transit for partial loading or unloading, storage, or processing in transit and other like privileges.

With the curtailment of certain routes these privileges are denied to some shippers and would cause the diversion of certain traffic to the motor vehicle carriers.

Any traffic lost by the railroads because of routing restrictions which enable the motor carriers to move in could very well be considered as gone for good. For their own advantage we believe the rail carriers will see the justification for opening the Spokane Gateway and permit a freer flow of commerce.

Mr. Merrill: That is all.

Mr. Rockwood: I have no cross examination.

[fol. 1119] Exam. Dishman: Any cross examination?

Mr. James: No cross examination.

Exam. Dishman: Is there anything more?

Mr. Merrill: That is all we have for today.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:40 o'clock p.m., November 10, 1954, the hearing in the above-entitled matter was adjourned to November 11, 1954 at 9:30 o'clock a.m.)